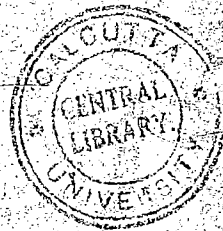


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THE SECOND YEAR OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

BY MANLEY O. HUDSON

Bemis Professor of International Law, Harvard Law School

A year ago, when an attempt was made in this JOURNAL to describe the inauguration of the Permanent Court of International Justice and the beginning of its work,¹ it seemed that a new experiment in international relations was on trial. But such has been its progress in two years that the court now appears to be one of the established institutions in our international life. The Foreign Offices have begun to regard it as a sort of international fixture. It is fast accumulating a record of achievement indispensable to the international law of the future, and the court now bids fair to be permanent in influence as in name.

Two years ago a fear was entertained that the new court might be neglected by the governments, and might be given little to do. The writer shared this fear to some extent, anticipating that "the new Permanent Court of International Justice may not be presented with a crowded docket for some time to come."² Some assurance was found in the early history of the Supreme Court of the United States,³ which did not have a contested case until its sixth term. But the fear has already proved to have been groundless, for the court's reception has greatly exceeded the general expectations. Not only have numerous questions come before the court in the two first years, but the existence of the court has influenced the diplomatic handling of other questions. It is notable also that since the court was created, no question has been referred to a tribunal of the Permanent Court of Arbitration,⁴ though various special arbitrations have been arranged. It now seems im-

¹ "The First Year of the Permanent Court of International Justice," by Manley O. Hudson, this JOURNAL, Vol. 17 (1923), p. 15.

² "The Permanent Court of International Justice," by Manley O. Hudson, 35 *Harvard Law Review* 245 (January, 1922). See, however, Mr. Hammarskjöld's valuable article, "The Early Work of the Permanent Court of International Justice," 36 *Harvard Law Review* 704.

³ The record of the early terms of the United States Supreme Court is in 2 Dallas' Reports, 399 ff. Professor Borchard seems to deny that this record affords any analogy. See *Proceedings of Academy of Political Science in the City of New York*, Vol. X, p. 137.

⁴ The agreement for the Norwegian-American arbitration was signed on June 30, 1921, before the judges of the new court had been elected; and strictly it may be contended that that case was not before a tribunal of the Permanent Court of Arbitration.

probable that the new court will be neglected because of a preference for specially chosen judges.⁵

When its first (extraordinary) session was ended on March 24, 1922, no question had yet been submitted to the Permanent Court of International Justice. During 1922 and 1923, nine questions have been disposed of. The first three, relating to the International Labor Organization, may be said to have been constitutional questions, of a sort which may frequently arise as the development of international organization proceeds in the future. The first (ordinary) session of the court, from June 15 to August 12, 1922, was occupied with these three questions.⁶ The other six questions have all involved the application of conventional law, the issues arising out of differences in the interpretation of treaties. The fourth question, relating to the Tunis-Morocco nationality decrees, necessitated a second (extraordinary) session from January 8 to February 7, 1923. The Eastern Carelian question, the case of the *S. S. Wimbledon*, the question about the German settlers in Poland, and the question about the acquisition of Polish nationality, were all disposed of at the second (ordinary) session from June 15, 1923, to September 15, 1923. The question as to the boundary between Czechoslovakia and Poland called for a third (extraordinary) session from November 12, 1923 to December 6, 1923.

THE TUNIS-MOROCCO NATIONALITY QUESTION

On August 11, 1922, the British Government requested that the following item be placed on the agenda of the Council of the League of Nations: "Dispute between France and Great Britain as to the nationality decrees issued in Tunisia and Morocco (French zone) on November 8, 1921, and their application to British subjects, the French Government having refused to submit the legal questions involved to arbitration." The matter came before the Council on October 2, 1922, when Lord Balfour (Great Britain) reported that "friendly conversations" had taken place, as a result of which he asked the Council to refer to the Permanent Court of International Justice the question "whether the dispute referred to above is or is not, by international law, solely a matter of domestic jurisdiction (Article 15, paragraph 8, of the Cove-

⁵ But see "Strength and Weakness of the New International Court," by Professor Edwin M. Borchard, 4 *Illinois Law Quarterly* 67, 69 (February, 1922). Mr. Borchard's suggestion that as the judges' views become known, governments will be more reluctant to submit cases to the court, seems to neglect the fact that the opinions and decisions are not handed down in the names of the particular judges.

⁶ For comment on these opinions, reference may be made to the earlier article in this JOURNAL, Vol. 17 (1923), pp. 18-23, and to Mr. Hammarskjöld's article in 36 *Harvard Law Review* 704, 717. See also "L'Organisation Permanente du Travail, Sa Compétence en Matière Agricole," by Maurice Guerreau, 29 *Revue Générale de Droit International Public*, 223; and especially the discussion by Professor Mahaim in 3 *Revue de Droit International et de Législation Comparée*, 3d ser., p. 503, and by Sir Cecil Hurs in the *British Year Book of International Law for 1923-24*, p. 172.

two governments to bring this matter before the national Justice", after having "decided to refer" it to the court. The Council then directed the Secretary General to "communicate" these paragraphs of the resolution to the court. On October 4, 1922, the Secretary General of the League of Nations transmitted to the Registrar of the court a copy of the resolution of the Council "for the information" of the court. This was not treated as a request for an advisory opinion as required by Article 72 of the rules of court, but such a request was sent on November 6.¹⁰ The question was before the court for an advisory opinion, therefore, though the Council left it to the French and British Governments to "present statements of their respective cases directly to the court," and asked that the court "consult the convenience of the two governments, so far as its rules of procedure permit, with regard to the manner in which the subject should be considered and its opinion be given."

The President of the court invited the French and British Governments to state whether an extraordinary session of the court should be summoned; if so, what date would be suitable; and what were their "special desires" as to procedure.¹¹ The two governments suggested January 8 as a date for an extraordinary session, and fixed November 25 as the date for the submission of cases, and December 23 as the date for the submission of counter-cases.¹² The British Government designated Mr. George Mounsey as agent, and the Right Honorable Sir Douglas Hogg, K. C., M. P., His Majesty's Attorney General, and the Right Honorable Sir Ernest Pollock, Bart., K. B. E., K. C., M. P., as counsel; and the French Government designated M. Mérillon as agent, and Professor de Lapradelle as *agent-adjoint*. Oral arguments were made before the court by representatives of the two governments. Indeed, although the matter was before the court as a request for an advisory opin-

⁷ *League of Nations Official Journal*, November, 1922, p. 1207.

⁸ M. Bourgeois was named in the resolution as printed in the *League of Nations Official Journal*, 1922, p. 7.

⁹ *League of Nations Official Journal*, November, 1922, p. 1209.

¹⁰ The correspondence between the Secretary General and the Registrar is published in *Acts and Documents*, No. 2, pp. 248 ff. (This volume is in the publications of the court, Series C.)

¹¹ *Acts and Documents*, No. 2, p. 263.

¹² These documents have not been published by the court. The French *contre-mémoire*, of 222 pages, contains a valuable collection of documents.

very scrupulous in confining itself to the question before it, insisting throughout that it was dealing with the nature of the dispute, not with its merits. This attitude was punctiliously maintained, in spite of the frequent insistence of M. de Lapradelle that the question was submitted "on its merits, so closely interconnected are form and substance in this matter."¹⁴

Moreover, the French Government in its draft of conclusions had stated that "the court has not only the right but the duty, especially in view of the fact that it is solely a question of formulating an opinion, to examine the whole development of the questions submitted by the parties and to furnish all the decisive arguments for the ultimate deliberation."¹⁵

For the British Government, it was contended that since each government relied "partly on questions of the existence or abrogation of treaties and of the construction of the terms of such treaties", the dispute was not by international law solely a matter of domestic jurisdiction. For the French Government, it was contended that "the sovereign right of a nation to legislate upon nationality questions within its own territory governs the situation"; that its application could be prevented only by a recognized rule of international law or by a provision of international treaty; that Great Britain had no rights in Tunis except those conferred by treaties with France, and these were limited in Tunis as in France; that the French protectorates over both Tunis and Morocco, which had been recognized by other nations, demanded "the progressive assimilation of the customs and laws of the protectorate to those of the protecting country;" and that no special limit exists on the power to make nationality imposed *jure soli* "prevail over any other nationality based on the *jus sanguinis*."

The Court dealt with the matter "in the light of the provisions" of paragraph 8 of Article 15 of the Covenant. The following passage from the opinion may be of assistance in future efforts to apply those provisions, which are held not to lend themselves to "an extensive interpretation:"

The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon

¹³ See *Acts and Documents*, No. 2, pp. 52, 53.

¹⁴ *Ibid.*, p. 56.

¹⁵ *Ibid.*, p. 241.

the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the court, in principle within this reserved domain.

The Aaland Islands case¹⁶ was cited as showing that a matter in dispute does not derive "international character calculated to except it from the application of paragraph 8 of Article 15" merely as a result of its being brought before the League of Nations, nor as a result of appeals by a party "to engagements of an international character in order to contest the exclusive jurisdiction of the other" party.

The court examined the French protectorates over Tunis and Morocco, and concluded that while a state possessed exclusive jurisdiction in regard to nationality questions in its own territory, the question whether this extends to protected territory is a question of international law. The French Government contended that treaties relied on by Great Britain had lapsed, "by virtue of the principle known as the *clausula rebus sic stantibus*", and this too was held to be a question of international law. The two governments also disagreed on the effect of declarations relating to Tunis, made by Great Britain,¹⁷ so that a question of international law was involved. There was a similar disaccord as to the effect of the arrangement of September 18, 1897, as to Tunis,¹⁸ and of the Franco-German convention of November 4, 1911,¹⁹ as to Morocco. Great Britain also relied on the most-favored-nation clause in the Anglo-French arrangement of September 18, 1897, in order to assert a benefit under Article 13 of the Franco-Italian consular convention of September 28, 1896;²⁰ while France contended that the most-favored-nation clause was limited to economic matters, and that the convention of September 28, 1896, was unavailable because of its synallagmatic character.²¹ This too was held to be a question not solely within the domestic jurisdiction of France. For all these reasons the court unanimously, the judge of French nationality concurring, reached the opinion that the dispute was not by international law solely a matter of domestic jurisdiction.

On the announcement of this opinion, at the public sitting of February 7, 1923, the agent for the French Government declared that "the French Government respectfully accepts a decision which does not give satisfaction to all its conclusions", and asked the court "to place on record that the French Government proposes to the English Government that the case should be submitted on its merits to the Permanent Court of International Justice."²²

¹⁶ See the *League of Nations Official Journal*, 1920, p. 249.

¹⁷ See especially the Order in Council of December 31, 1883. 74 *British & Foreign State Papers* 694.

¹⁸ 89 *British & Foreign State Papers* 40.

¹⁹ 104 *British & Foreign State Papers* 948.

²⁰ 88 *British & Foreign State Papers* 720, 733.

²¹ Cf. the American restriction on interpretation of the most-favored-nation clause. Hyde, *International Law*, Vol. II, p. 73.

²² *Acts and Documents*, No. 2, p. 13.

The agent for the British Government stated that his government would "give careful consideration to any proposals which the French Government may see fit to address to them." When the court again met on June 15, 1923, the President announced the receipt of a letter from the French Minister at The Hague and a letter from the British Chargé d'Affaires at The Hague, both under date of June 7, 1923, informing him that an amicable arrangement had been concluded on May 24 closing the matter, and that the two governments had therefore decided to stop the proceedings before the court.²³

An American writer, Mr. Charles Noble Gregory, has sharply criticized the court for its opinion in this case,²⁴ stating that the court was "controlled by no code", had showed "little of conservatism", and had struck an "exotic note." His statement that the judges fell fast asleep during the argument was admittedly based on "private information" and is obviously the kind of statement which has no place in a serious discussion of a judicial opinion. But his particular criticism seems to be that the court did not sufficiently rely on precedent, and he finds a "departure from English and American precedent." It would be exceedingly strange if an international tribunal should acknowledge itself bound to follow "English and American precedent" or practice. Moreover, the writer failed to refer to any available precedents to which the court might have referred. Indeed, it was a situation where precedents were lacking, though the court did refer to the Aaland Islands case in support of its view. Mr. Gregory called the opinion a "decision", and this may have been one of the reasons for his neglecting the limits within which the court acted, and for his permitting himself to "look to the uncharted course of the high tribunal with real solicitude."

²³ The British Chargé d'Affaires communicated copies of the notes exchanged embodying the terms of the amicable arrangement. *Document C. 422. M. 186. 1923. V.* These terms are:

a) The French Government agreed to make arrangements before January 1, 1924, whereby a British national who is the child born in Tunis of a British national who was himself born there shall be entitled to decline French nationality, it being understood, however, that this right will not extend to succeeding generations.

b) A child born in Tunis of a British national born elsewhere than in Tunis is not claimed to possess French nationality, and French nationality will not be imposed on any British national born in Tunis before November 8, 1921, without an opportunity being afforded to him to decline it.

c) No attempt will be made to impose Tunisian nationality instead of French nationality on British nationals in Tunis.

d) Neither government abandons its point of view maintained either in the diplomatic correspondence or in the preliminary proceedings at The Hague; nor will the principle adopted in the present agreement be applicable elsewhere than in Tunis.

e) The application to British subjects of the similar nationality decrees promulgated in Morocco (French zone) will not for the present give rise to further proceedings at The Hague, since this question has at present no practical importance. On this question, the two governments reserve their rights. See *British Treaty Series*, No. 11 (1923), Cmd. 1899.

²⁴ In this JOURNAL, Vol. 17 (1923), pp. 298-307.

THE EASTERN CARELIA QUESTION

On October 14, 1920, a peace treaty was concluded at Dorpat between the Republic of Finland and the Russian Socialist Federal Soviet Republic, the text being in the Finnish, Swedish and Russian languages.²⁵ Articles 10 and 11 of this treaty refer to the "autonomous territory of Eastern Carelia", and confer certain rights on the "Carelian population of the Governments of Archangel and Olonetz", "which shall enjoy the national right of self determination." At the general meeting of the peace delegates on October 14, 1920, a declaration was inserted in the *procès-verbal* on behalf of the Russian delegation, by which certain rights were guaranteed to the Carelian population of the Governments of Archangel and Olonetz (Aunus).²⁶ On December 31, 1920, ratifications of the treaty were exchanged at Moscow, but the *procès-verbal* of the exchange does not mention the declaration.²⁷ On the same date a *procès-verbal* of signature of a French text of the treaty was drawn up, referring to "all relevant acts" in addition to the treaty.

In the latter part of 1921, the Carelian population rose in insurrection and on November 26, 1921, the Finnish Government addressed a letter to the Council of the League of Nations, complaining of the non-execution of the guarantees, and asking the Council to consider the advisability of instituting an inquiry with a view to subsequent discussion. The matter came before the Council of the League on January 14, 1922, and the Council expressed a willingness "to consider the question with a view to arriving at a satisfactory solution if the two parties concerned agree", and further expressed the "opinion that one of the interested states, member of the League,"²⁸ which is in diplomatic relations with the government of Moscow, might ascertain that government's intentions in that respect."²⁹

In pursuance of this resolution, the Estonian Government exchanged notes with the Russian Government and invited the latter to submit the question to the Council "on the basis of Article 17 of the Covenant." But the steps taken "led to no result, as the Soviet Government adopted the attitude that the question of Eastern Carelia was to be regarded as one of a purely domestic character."³⁰ The Russian Government seems also to have contended that the treaty and declarations of Dorpat "were only intended

²⁵ *League of Nations Treaty Series*, Vol. 3, p. 5.

²⁶ An English translation is published in *League of Nations Treaty Series*, Vol. 3, p. 76. On the general question, see "La Question de la Carélie Orientale," by Professor R. Erich, in 3 *Revue de Droit International et de Législation Comparée*, 5d ser., p. 1.

²⁷ The text of the *procès-verbal* is published in *League of Nations Treaty Series*, Vol. 3, p. 79.

²⁸ Statements had been submitted by the Estonian, Latvian, Lithuanian, and Polish governments.

²⁹ *League of Nations Official Journal*, 1922, p. 193.

³⁰ See memorandum by the Secretary General, of February 1, 1923, in *League of Nations Official Journal*, 1923, p. 343.

as information regarding a situation already existing" under a decree of June 8, 1920, and to have regarded the French text as inaccurate.³¹

On November 10, 1922, the Finnish Government addressed a letter to the Council of the League of Nations (received on January 17, 1923) expressing the desire that the Council "request the Permanent Court of International Justice to adjudicate not only upon the legal aspect of the question but also upon the other differences of opinion to which this question has given rise." When this request came before the Council on February 1, 1923, consideration of the question was adjourned to the Council's next session.³² On April 20, 1923, the matter again came before the Council and Mr. Enckell on behalf of Finland submitted a statement expressing the view that an opinion by the court would "introduce a pacific influence on the parties," and could afford a basis for a renewal of the offer of good offices by other states. He also submitted a very frank and able memorandum by Professors Chydenius, Erich and Hermanson of the University of Helsingfors.³³ On April 21, 1923, the Council decided to ask the court for an advisory opinion on the following question:

Do Articles 10 and 11 of the treaty of peace between Finland and Russia signed at Dorpat on October 14, 1920, and the annexed declaration of the Russian delegation regarding the autonomy of Eastern Carelia constitute engagements of an international character which place Russia under an obligation to Finland as to the fulfilment of the provisions contained therein?³⁴

In addition the Secretary General was authorized to take such action as he might deem necessary to give effect to the action taken by the Council, to submit all the necessary assistance in the examination of the question, to make all necessary arrangements to be represented if necessary, and to make all necessary arrangements to be represented if necessary. The Secretary General addressed a formal note to the court, to all members of the League and to other states in the Annex to the Covenant, including the United States. The Registrar was also directed to notify the Russian Government.³⁵ A telegraphic reply was

³¹ See statement by M. Enckell, in *League of Nations Official Journal*, 1923, p. 222.

³² *League of Nations Official Journal*, 1923, p. 222.

³³ Reprinted in *League of Nations Official Journal*, 1923, p. 661. See, also, the opinions of Professors de Visscher of Ghent, Lie of Christiaania, and Berlin of Copenhagen, in a brochure published by the "Carelian Delegation" in 1923.

³⁴ *League of Nations Official Journal*, 1923, p. 578.

³⁵ This statement has been incorporated in all of the recent resolutions requesting advisory opinions.

³⁶ The Registrar's letter of May 19, 1923, to the Russian People's Commissary for Foreign Affairs, stated: "Notice is hereby given in accordance with the principle, laid down in the rules of court, according to which governments and international organizations, which are likely to be able to furnish information on a question submitted to the court for an advisory opinion, shall receive notice of such question." Cf., Rules of court, Article 73.

received from M. Tchitcherin, the Russian Peoples' Commissary for Foreign Affairs, dated June 11, 1923, stating that the Russian Government found it impossible to take any part in the proceedings which were without legal value, resuming the position previously taken by the Russian Government and referring to an official communication of June 18, 1922, repudiating "the claim of the so-called League of Nations to intervene in the question of the internal situation of Carelia."³⁷

When the court met to consider the matter, it intimated to M. Erich, the agent of Finland, that it would be glad to have his views on the question of its competence. The argument by M. Erich on June 22 and 26 dealt with both the competence of the court and the merits of the Russian arguments. On July 23, 1923, the court handed down the conclusions of the majority of seven judges (in which judges Weiss, Nyholm, de Bustamante and Altamira did not share) which are referred to by the majority as an "opinion" and published as No. 5 in the *Collection of Advisory Opinions*. The majority analyzed very carefully the nature of the dispute, saying that there was no question about the existence of the treaty of Dorpat, but that the "parties" differed as to its interpretation and divided on whether the declaration constituted part of its terms. The question whether the declaration formed part of the obligations into which Russia entered was said to be a "question of fact." The court found itself asked to give an opinion bearing on an actual question between Finland and Russia. "Answering the question equivalent to deciding the dispute between the parties," the court expressly declared that "the case is one under Article 17 of the Statute." It was "not possible to show that Russian consent was necessary to any submission of the dispute, the court being competent and able for the court to give the opinion."

The majority thought it "very inexpedient" for the court to proceed with the question. The attendance of witnesses was not necessary. It was doubtful whether the court had available material sufficient for a judicial conclusion upon the question of fact as to what the parties did agree to. The necessary investigation would require the consent and cooperation of both parties.

Yet the court did not "regret that the question has been put, as all must now realize that the Council has spared no pains in exploring every avenue which might possibly lead to some solution with a view to settling a dispute between two nations."

Apart from any appraisal of the conclusion at which the court arrived, it seems indisputable that the judges acted under a very proper sense of the limitations surrounding judicial action. Moreover, the dignity and force of advisory opinions is protected by the court's attitude toward its function. It is a welcome declaration that "the court, being a court of justice, cannot,

³⁷ For the text, see *Advisory Opinion No. 5*, pp. 12-14.

matter be placed before "the jurisdiction provided for in the treaty."⁴⁷ This demand was later agreed to by the Conference of Ambassadors, which on November 16, 1922 "accepted that the affair be put before the Permanent Court of International Justice at The Hague."

Under Article 31 of the statute, Professor Schücking was named by Germany as a national judge to sit in the case. It is notable that he participated in the opinion admitting the intervention of Poland. But no question seems to have arisen as to Poland's having a national among the judges, as an intervening party.

The applicants submitted a case on March 17, 1923, and a reply on May 18, 1923; and the respondent submitted a counter-case on April 20, 1923, and a rejoinder on June 15, 1923. The British Government was represented before the court by Sir Cecil Hurst, the French Government by Professor Basdevant, the Italian Government by Commendatore Pilotti, the Japanese Government by M. Ito, the Polish Government by M. Olechowski, and the German Government by M. Schiffer. The German Government raised a point as to the *locus standi* of the four applicants, but the court thought this clear.

The facts were not in dispute. The parties had not agreed, however, as to whether Poland and Russia were still at war on March 21, 1921. An armistice and preliminary peace treaty had been signed at Riga on October 12, 1920,⁴⁸ and put into force on November 2, 1920, and a definitive treaty of peace was signed at Riga on March 18, 1921, but ratifications were not exchanged until April 30, 1921.⁴⁹ The question therefore as to when the state of war ended, was extensively discussed in diplomatic correspondence and in the case and counter-case. But the majority of the judges found it unnecessary to consider the point.

The chief problem raised related to the construction of Article 380 of the treaty of Versailles, and it is this problem on which the court divided by nine to three, in handing down a decision on August 17, 1923. The majority decided that the clear effect of the article was to make the Kiel Canal an international waterway, open equally to vessels of commerce and war vessels belonging to nations at peace with Germany. While disposed to give the limitation on Germany's sovereign power a restrictive interpretation, the "plain terms of the article" were not to be destroyed. The régimes of the Suez and Panama Canals were reviewed to demonstrate that the passage of war vessels in time of war was not regarded as incompatible with the neutrality of the riparian sovereign. Germany was held to have no duty to refuse access to the *Wimbledon*, but a definite treaty duty to allow it.

Judges Anzilotti and Huber found Article 380 to be dependent on the existence of a state of peace; that there was no intention to deprive Germany of power to take necessary measures to protect her paramount interests in

⁴⁷ See the applicant Powers' *Memoire*, p. 29.

⁴⁸ *League of Nations Treaty Series*, Vol. IV, p. 7.

⁴⁹ *Ibid.*, Vol. VI, p. 51.

event of war or neutrality; that Article 380 must be read with other Articles of Part XII; and that Germany was free to take non-arbitrary measures necessary to protect her interests as a belligerent or neutral power. In a separate dissenting opinion, Professor Schücking found that Article 380 imposed a servitude and was therefore to be interpreted restrictively with a view to protecting the vital interests of the servient state. He urged also that Germany's duties as a neutral toward Russia had not been affected by the treaty of Versailles, and that as the cargo of the *Wimbledon* had been despatched by a Polish mission in Salonika, consigned to the naval base of the Polish state in Danzig, it was to be considered as a convoy⁵⁰ and Germany owed Russia a duty to forbid its passage through the Kiel Canal.

The court pronounced Germany to have been wrong in refusing access to the Kiel Canal to the *S. S. Wimbledon*; that Article 380 precluded Germany's applying the neutrality order of July 25, 1920;⁵¹ that the German Government should make good the prejudice sustained, to the amount of 140,749.35 French francs, to be paid within three months, with interest at 6% from the date of the judgment. As to costs, the court refused to vary the rule of Article 64 of the statute, leaving each party to bear its own costs. The satisfaction of the judgment has not yet been announced.

Like many cases of interpretation, this case represents a choice by the court of one of two possible constructions to be put upon a text. The reasons for selecting the construction chosen are not of compelling force, and there were probably certain pragmatic tests in the minds of the judges which were not brought out into the open. In this respect, the court must resemble most national courts, and the judge's function differs only in degree from that of the legislator or treaty-maker whose selection is less limited.

The case is notable, however, for four things. It is the first exercise of the court's jurisdiction in a contested case between states, for in all other instances the court has been giving advisory opinions. It is the first exercise of the court's compulsory jurisdiction conferred by special treaties. It is the first case in which a national judge has participated. And it is the first case in which a state has intervened under the procedure laid down in the statute.

GERMAN SETTLERS IN POLAND

On November 9, 1921, the Secretary General of the League of Nations received a telegram from the Germanic League of Bydgoszcz in Poland, informing him that several thousand Germanic farmers of both Polish and German nationality were about to be evicted from their farms by the Polish Government.⁵² In view of the urgency, the procedure outlined as to minority pe-

⁵⁰ See the Hague Convention of 1907, respecting the rights and duties of neutral Powers and persons in case of war on land, Articles 2 and 7. 2 Malloy, *Treaties*, pp. 2297, 2298.

⁵¹ The order is to be found in *Reichs-Gezetzblatt*, 1920, No. 158, p. 1469.

⁵² The matter had been previously discussed in the Conference of Ambassadors.

titions in the Council resolutions of October 25, 1920,⁵³ and June 27, 1921,⁵⁴ was followed and the petition was both communicated to the Polish representative and referred to a committee consisting of the Belgian, Italian, and Japanese members of the Council. This committee reported to the Council on May 17, 1922, and the Council invited M. Askenazy, the Polish representative, to "consider, in conjunction with the Secretary-General, the various questions of law raised in the report, in order to enable the Council to decide whether, and if so, on what questions, the Permanent Court of International Justice should be asked to give an opinion."⁵⁵ Meanwhile, the Polish Government accepted various suggestions for the suspension of administrative or judicial measures changing the situation.

The matter was again considered by the Council on July 20, 1922⁵⁶ and September 9, 1922,⁵⁷ and on the latter date the Council requested the Secretary General to summon forthwith a committee of jurists to study the legal questions concerning the contracts of the German colonists established by the former German colonization commission, as well as the question of the interpretation of Article 4 of the Polish minorities treaty of June 28, 1919. This committee was asked to report at the current session of the Council. MM. Botella (Spain) and Fromageot (France), Sir Cecil Hurst (Great Britain), and Dr. van Hamel, Director of the Legal Section of the Secretariat, composed the committee. Their report⁵⁸ came before the Council on September 30, 1922, and was communicated to the Polish Government. On December 7, 1922, the Polish Minister for Foreign Affairs communicated the views of his government, which declined to accept the report of the jurists. On February 2, 1923, the Council decided to request the opinion of the court, and on February 3, 1923, the Council adopted the following resolution:⁵⁹

The Council of the League of Nations having been apprised of certain questions regarding the following facts:

(a) A number of colonists who were formerly German nationals, and who are now domiciled in Polish territory previously belonging to Germany, have acquired Polish nationality, particularly in virtue of Article 91 of the treaty of Versailles. They are occupying their holdings under contracts (*Rentengutsverträge*) which although concluded with the German colonization commission prior to the armistice of November 11, 1918, did not receive an *Auflassung* before that date. The Polish Government regards itself as the legitimate owner of these holdings under Article 256 of the treaty of Versailles, and considers itself entitled to cancel the above contracts. In consequence, the Polish authorities

⁵³ *Minutes of Council*, 10th session, p. 33.

⁵⁴ *Ibid.*, 13th session, pp. 51, 235.

⁵⁵ *League of Nations Official Journal*, June, 1922, pp. 555, 702.

⁵⁶ *Ibid.*, August, 1922, pp. 806, 917.

⁵⁷ *Ibid.*, November, 1922, pp. 1181, 1293.

⁵⁸ *Ibid.*, November, 1922, p. 1299.

⁵⁹ *Ibid.*, March, 1923, pp. 240, 395.

have taken certain measures in regard to these colonists by which the latter will be expelled from the holdings which they occupy;

(b) The Polish authorities will not recognize leases conceded before November 11, 1918, by the German Government to German nationals who have now become Polish subjects. These are leases over German state properties which have subsequently been transferred to the Polish state in virtue of the treaty of Versailles, in particular of Article 256:

Requests the Permanent Court of International Justice to give an advisory opinion on the following questions:

(1) Do the points referred to in (a) and (b) above involve international obligations of the kind contemplated by the treaty between the United States of America, the British Empire, France, Italy, Japan and Poland, signed at Versailles on June 28, 1919, and do these points come within the competence of the League of Nations as defined in that treaty?

(2) Should the first question be answered in the affirmative, the Council requests the court to give an advisory opinion on the question whether the position adopted by the Polish Government, and referred to in (a) and (b) above, is in conformity with its international obligations.

The Secretary-General is authorized to submit this request to the court, together with all the relevant documents, to explain to the court the action taken by the Council in this matter, to give all assistance necessary in the examination of the question, and, if required, to take steps to be represented before the court.

By a formal request of March 2, 1923, the court became seised of the matter. On April 18, 1923, the Council acted on a request of the Polish Government to "confirm" paragraph (b) of its resolution of February 3, "in order that it might be stated with the absolute clearness prescribed by Article 72 of the rules of court." To this end, it was stated "that paragraph (b) refers exclusively to the case of a special category of colonist farmers, namely, those who occupy holdings in virtue of leases contracted before the armistice and still unexpired and who subsequently obtained after the armistice amortization contracts (*Rentengutsverträge*) for these holdings."⁶⁰ This decision was duly communicated to the court.

Notice of the request for an advisory opinion was communicated to all members of the League, to other states mentioned in the Annex to the Covenant, and to the German Government. On August 2 the court heard statements by Count Rostworowski and Sir Ernest Pollock on behalf of Poland, and by M. Schiffer on behalf of Germany. From these statements and the documents submitted, it appeared that Poland had acted on Article 256 of the treaty of Versailles of June 28, 1919, to enact the law of July 14, 1920, substituting the treasury of the Polish state for the German state on the land registers and authorizing the expulsion of persons who occupied under contract with the German state or crown. The two questions before the court related to (1) the competence of the Council to take cognizance of the matter under the Polish minorities treaty, and (2) the Council having been found

⁶⁰ *League of Nations Official Journal*, June, 1923, pp. 558, 637.

competent, the right of the settlers to continue to hold the lands they occupy.

On September 10, 1923, the court handed down a unanimous opinion. It first held that the Council was competent under paragraph 2 of Article 12 of the Polish minorities treaty and had properly exercised its competence in requesting the advisory opinion. No question arose therefore as to the court's jurisdiction under paragraph 3 of Article 12 of the Polish minorities treaty. The necessity for consideration of Article 256 of the treaty of Versailles was only incidental to the necessity for considering questions under the minorities treaty, and hence did not affect the competence of the Council.

As to the second question, the court held that the armistice of November 11, 1918, had not invalidated the contracts under consideration, for the cession of German territories to Poland had not been effective until January 10, 1920, when the treaty of Versailles came into force. The holders under *Rentengutsverträge* had not acquired legal ownership, before *Auflassung*, but had valid and enforceable contracts for which consideration had been paid. Such a holder was therefore said to be a purchaser who had acquired a *jus ad rem* which after *Auflassung* became a *jus in re*. Under the German law⁶¹ the state could be sued in the courts to enforce this right. "The fact that there was a political purpose behind the colonization scheme cannot affect the private rights acquired under the law." Such private rights were unaffected by the change of sovereignty, and were protected against the "virtual annulment" attempted under the law of July 14, 1920, by the equality provisions of the minorities treaty. The treaty of Versailles had not diminished this protection, and neither it nor the armistice had forbidden the Prussian state from proceeding to confirming the acquired rights with an *Auflassung* issued after November 11, 1918.

As to the leases (*Pachtverträge*) concluded prior to November 11, 1918, the same reasoning led to the conclusion that they "were not affected by the transfer of sovereignty, and that they remain in force unless they have expired or have been legally superseded by *Rentengutsverträge*." Moreover, the Prussian state had not been precluded from granting, prior to the passing of the territory to Poland, a *Rentengutsvertrag* to a holder of a *Pachtvertrag* granted prior to the armistice, and such a *Rentengutsvertrag* should be respected by Poland.

The court was therefore of opinion that (1) the points referred to did involve international obligations of the kind referred to in the minorities treaty and so came within the League's competence as there defined; and (2) the position adopted by the Polish Government was "not in conformity with its international obligations."

This opinion was duly transmitted to the Secretary-General of the League of Nations on September 15, who communicated it to the members of the League and to other states named in the Annex. It came before the Council on September 25, 1923, and the Council "invited the Polish Government to

⁶¹ German Code of Civil Procedure, Introductory Act, Article 4.

communicate to it, before the next Council session, information showing what measures the Polish Government proposes to take in order to settle the question of these colonists."⁶² Acting on this invitation, the Polish Government on December 1, 1923, addressed a letter to the Secretary General of the League of Nations, suggesting a "practical solution", involving a pecuniary settlement between the Polish Treasury and the dispossessed colonists, and a withdrawal of orders of expulsion against colonists in respect of whom judgments have not been carried into effect. This letter was communicated to the Council on December 8, 1923.

ACQUISITION OF POLISH NATIONALITY

The Germanic League of Bydgoszcz submitted to the Council of the League two memoranda in connection with the telegram of November 9, 1921. The second of these, dated November 12, 1921, dealt with the interpretation of certain provisions of the Polish minorities treaty of June 28, 1919. This was referred to the Council committee which dealt with the questions raised by the same petitioner with reference to German settlers in Poland, and later also to the committee of jurists who studied the latter question.⁶³ On December 7, 1922, the Polish Minister for Foreign Affairs stated that as regards Article 4 of the Polish minorities treaty, the Polish Government could not alter its interpretation of that article so long as the Germans gave evidence of a tendency to avail themselves of it for a totally different purpose from that of assuring individual interests. Poland also contended that Article 4 had not been placed under the guarantee of the League of Nations.⁶⁴

When the matter came before the Council on February 2, M. Askenazy informed the Council that negotiations with reference to the question were in progress at Dresden, between the German and Polish Governments.⁶⁵ For this reason, the Council accepted a suggestion of M. da Gama (Brazil) that the question be adjourned pending the result of these negotiations. On July 4, 1923, the matter again came before the Council, and the Brazilian representative reported that the Polish Government had informed the Secretary-General on June 26 that a basis for agreement had been found at Dresden, and on this ground action was postponed. On July 6, 1923, the German Government informed the Council that it did not foresee the possibility of a speedy settlement by direct negotiation. On July 7, 1923, M. de Modzelewski (Poland) withdrew his request for adjournment of the question, and asked the Council, before referring any question to the court, to seek the views of other states bound by similar minority treaties—Czecho-Slovakia, Roumania, and the Serb-Croat-Slovene Kingdom. But

⁶² Document C. 637. 1923. 1.

⁶³ See *League of Nations Official Journal*, June, 1922, pp. 555, 702; August, 1922, pp. 806, 917; and November, 1922, pp. 1181, 1297, 1300.

⁶⁴ *Ibid.*, March, 1923, p. 396.

⁶⁵ *Ibid.*, March, 1923, p. 396.

this was not agreed to by the Council, which decided to ask the court for an advisory opinion on the questions:

(1) Is the League of Nations competent to deal with the question of Article 4 of the treaty of June 28, 1919 between the Principal Allied and Associated Powers and Poland?

(2) If the League of Nations is competent, what is the precise interpretation of that article?

The precise text was left to the President's redaction. The Polish representative took "note of the Council's resolution", and said he would "bring it to the notice" of his government.⁶⁶ The resolution was later drafted to read as follows:⁶⁷

The Council of the League of Nations having received notice of the following question:

The Polish Government has decided to treat certain persons, who were formerly German nationals, as not having acquired Polish nationality and as continuing to possess German nationality, which exposes them in Poland to the treatment laid down for persons of non-Polish nationality, and, in particular, of German nationality:

On the one hand, on the ground that these persons were born in the territory which is now part of Poland, their parents having been habitually resident there at the date of this birth, it is maintained that in virtue of Article 4, paragraph 1, of the treaty of June 28, 1919, between the Principal Allied and Associated Powers and Poland, they are *ipso facto* Polish nationals and consequently, enjoy all the rights and guarantees granted by the provisions of the said treaty to Polish nationals belonging to racial, religious or linguistic minorities;

On the other hand, the Polish Government considers itself entitled not to recognize these persons as Polish nationals, if their parents were not habitually resident in the above-mentioned territory, both on the date of birth of the person concerned and on the date of the entry into force of the above-mentioned treaty, namely, January 10th, 1920. It is, consequently, maintained that these persons cannot legally enjoy the guarantees granted by the treaty:

Requests the Permanent Court of International Justice to give its advisory opinion, if possible during the present session, on the following questions:

(1) Does the question regarding the position of the above-mentioned persons, in so far as they may belong to racial or linguistic minorities arising out of the application by Poland of Article 4 of the treaty of June 28, 1919, between the Principal Allied and Associated Powers and Poland, fall within the competence of the League of Nations under the terms of the said treaty?

(2) If so, does Article 4 of the above-mentioned treaty refer solely to the habitual residence of the parents at the date of birth of the persons concerned, or does it also require the parents to have been habitually resident at the moment when the treaty came into force?

⁶⁶ See *League of Nations Official Journal*, August, 1923, pp. 934-5. Apparently the concurrence of the Polish representative was not necessary. See Lord Robert Cecil's remarks with reference to the expropriation by the Roumanian Government of the property of Hungarian optants, *League of Nations Official Journal*, August, 1923, p. 905.

⁶⁷ *Ibid.*, August, 1923, p. 999.

The Secretary-General is authorized to submit this request to the court, together with all documents concerning the question, to inform the court of the action taken by the Council in the matter, to give all necessary assistance in the examination of the case, and, if necessary, to arrange to be represented at the court.

The court became seised of the question by a letter of the Secretary-General of July 11, 1923. Notice was given to all members of the League, to other states mentioned in the Annex, and to the German Government.⁶⁸ The court heard oral statements by Count Rostworowski, on behalf of Poland, and by M. Schiffer on behalf of Germany. On August 25, the court was informed of the Roumanian Government's desire to be heard and September 3 was set as the date; but the time was considered by Roumania to be too short, and the court did not extend it owing to the advanced state of its session and the desire of the Council that the question be disposed of at that session.

On September 15, 1923, the court handed down a unanimous opinion,⁶⁹ though Lord Finlay added some "observations" on one of the questions involved. The court first expressed the opinion that the matter was within the competence of the League of Nations, denying Poland's contentions that only Polish nationals could constitute a protected minority and that Articles 3 to 6 of the minorities treaty were not included in the guarantee of the League of Nations established by Article 12. Lord Finlay concurred in these conclusions, but would have preferred "that the court should not merely have based its answer to the Polish contention as to competency on the view that the minority contemplated by Article 12 may be one of inhabitants simply, but that it should also have pointed out that . . . the Polish case fails even if the minority were to be taken on the basis of *ressortissants*." ⁷⁰

The court then expressed the opinion that Article 4 of the Polish minorities treaty refers "only to the habitual residence of the parents at the date of birth of the persons concerned." The Polish Government had contended that "of the individuals of German origin born in this territory, only those can claim Polish nationality whose parents were habitually resident there" both on January 10, 1920, and on the day of the birth of the individual. The court thought that such an interpretation would "amount to an addition to the text" which had plainly synchronized birth and residence; that

⁶⁸ Though Article 73 of the rules of court did not require that notice be sent to Germany, and though Germany might not have a *locus standi* with reference to ordinary questions arising under the Polish minorities treaty, the court's action in sending such notice in this case would seem to have been a proper exercise of its discretion. But in its letter of December 1, 1923, addressed to the President of the Council, the Polish Government seems to have objected to the court's hearing the German Government on the ground that Germany "would not in any way be regarded as an interested party."

⁶⁹ Judge Moore took part in the deliberations and concurred in the conclusions, but was forced to leave The Hague before the terms of the opinion were finally settled.

⁷⁰ *Advisory Opinions, Series B, No. 7, p. 26.*

it would have the effect of depriving of Polish nationality a person born in Poland of parents habitually resident there at the time, simply because his parents were dead on January 10, 1920. The clause of the treaty "leaves little to be desired in the nature of clearness," and the additional condition contended for would require a reconstruction of the text.

This advisory opinion was duly transmitted to the Secretary-General of the League of Nations who on September 18, 1923, communicated its text to all members of the League and other states mentioned in the annex. On September 27, 1923, the Council "adopted" the advisory opinion of the court, though M. Skirmunt (Poland) seems to have abstained from voting.⁷¹ At that time, also, the British Government raised certain further questions about the interpretation of Article 3 of the Polish minorities treaty.

The advisory opinion relating to the German settlers in Poland and that relating to the acquisition of Polish nationality represent a constructive and judicial application of the new body of international law contained in the minorities treaties. The court has not only taken account of the purpose and function of those treaties. It has also grasped the practical considerations which condition the success of this innovation. With a narrow and destructive attitude on the part of the court, these treaties might have met with the same failure and miscarriage as the minority provisions in the treaty of Berlin. But there is no trace of such an attitude in these opinions. Due regard is apparent for the necessities of the governments in the new states of Eastern Europe, while at the same time the appreciation of the ends to be served by the treaty provisions is such as to build a confidence among the minority peoples who must depend on them. The opinions constitute a contribution to international law worthy of a John Marshall.

THE JAWORZINA QUESTION

The Ambassadors at Paris of Great Britain, Italy and Japan and the Minister of Foreign Affairs of France, acting as the "Conference of Ambassadors", decided on July 27, 1923, to request the Council of the League of Nations to suggest a solution of the Jaworzina question, relating to the delimitation of the frontier between Poland and Czecho-Slovakia in that part of the territory of Spisz where the Jaworzina district is situated. The question had been before the Conference of Ambassadors for many months, and in referring it to the Council, the Conference stated that it would welcome a submission of the legal question involved to the Permanent Court of International Justice. The Council began to consider the matter on September 20, 1923. Dr. Benes (Czecho-Slovakia) declared that "the fact that the matter was before the League of Nations would certainly appease any disquiet," but insisted on the urgent nature of the problem and asked for a reference to the Permanent Court of International Justice. M. Skirmunt (Poland) likewise agreed to such a reference. On September 27, 1923, the

⁷¹ See *procès-verbal* 19/1 of the 26th session of the Council.

Council decided to ask the court for an advisory opinion on the following question:

Is the question of the delimitation of the frontier between Poland and Czechoslovakia still open, and, if so, to what extent; or should it be considered as already settled by a definitive decision (subject to the customary procedure of marking boundaries locally, with any modifications of detail which that procedure may entail)?

The court became seised of this matter by reason of a letter of the Secretary-General of September 29, 1923. The court met in extraordinary session on November 12, 1923, to consider its opinion. The Polish Government was represented before the court by M. Jean Mrozowski, President of the Supreme Court of Poland, and Professor Joseph Blociszewski; Czechoslovakia by Professor Jan Krcmar, and Dr. Krno. A unanimous opinion was handed down on December 6, 1923, by which the court held that "the question of the delimitation of the frontier between Poland and Czechoslovakia has been settled by the decision of the Conference of Ambassadors of July 28, 1920, which is definitive, but that this decision must be applied in its entirety."

In the statement of the question by the Council, a summary of the main contentions of Poland and Czechoslovakia had been placed before the court. Originally, it was decided on September 27, 1919 that a plebiscite was to be taken in the Spisz area,⁷² but at the Spa Conference in July, 1920, this arrangement was suspended. On July 28, 1920, a frontier line dividing the district between Poland and Czechoslovakia was decided upon by the Conference of Ambassadors, subject to such modifications as might later be made on the recommendation of the delimitation commission, and was accepted by Poland and Czechoslovakia. This decision was held by the court to have had a "final character." It was the result of what the court compared to an "arbitration." The agreements of Poland and Czechoslovakia of July 10, 1920, and July 28, 1920, were held to have given the decision of the Conference of Ambassadors, "over and above the authority possessed by a decision of the Principal Allied and Associated Powers", the "force of a contractual obligation entered into by the parties." The court then proceeded to construe the effect of the decision, denying the Polish contention as to its partial character. A question arose as to the effect of interpretations put on the decision by the Conference of Ambassadors, itself, some two years after the date of its formulation. The court likened the conference to an arbitrator in this respect, and refused to admit a modification of the clear effect of the decision by the later interpretation. Only the delimitation commission had been given power to vary the decision, and this power was still preserved to it. The undertaking of Poland and Czechoslovakia

⁷² For the text of this decision, see 113 *British and Foreign State Papers* 804. For the decision of the Conference of Ambassadors of July 28, 1920, see *ibid.*, p. 860. For the court's opinion, see *Collection of Advisory Opinions*, No. 8.

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Slovakia on November 6, 1921, to settle "the question of the commune of Jaworzina within a period of six months by means of a direct and friendly agreement between the two governments", had not reopened the whole question; nor had that result been effected by the decision of the Conference of Ambassadors of December 2, 1921, calling on the Polish and Czecho-Slovak Governments to reach a decision by January 15, 1922, and authorizing the delimitation commission to proceed to carry out the decision of July 28, 1920, if they failed to do so.

PROPOSED REFERENCES TO THE COURT

Various questions arose during the year with reference to which proposals were made for references to the court.

a) *Lithuania's request.* On February 3, 1923, the Council of the League of Nations, in the course of its consideration of the Vilna dispute between Lithuania and Poland, adopted a recommendation for apportioning between the two countries the administration of the neutral zone established in the Vilna territory by the Kovno protocol of February 29, 1920.⁷³ The recommendation was accepted by Poland, but not by Lithuania. The Lithuanian Government soon afterward requested that the Council seek the court's opinion with reference to two questions which had arisen relating to the interpretation of the Covenant. On March 8, 1923, these questions were formulated as follows:

1. Has the Council of the League of Nations the right, when a dispute is submitted to it under paragraph 1 of Article 15 of the Covenant, to address to the parties with regard to incidental questions which have not been specifically submitted to it, recommendations having the same force as the Council's reports referred to in paragraphs 4, 6, and 7 of the same article?

2. If the recommendations of a report by the Council of the League of Nations have been adopted in the circumstances contemplated in the 6th paragraph of Article 15 of the Covenant of the League of Nations and have been accepted by one of the parties, are such recommendations binding upon the other party if it does not accept them? And, secondly, if, within the period fixed by Article 12 of the Covenant, it goes to war with a party which accepts the report, is it liable to the penalties laid down in Article 16?

On April 21, 1923, the Council considered this request of Lithuania and decided, on the proposal of M. Hymans (Belgium), not to seek the court's opinion. The Lithuanian representative then asked that the request be put on the agenda of the next Assembly.⁷⁴ The item on the Fourth Assembly's agenda was as follows:

23. Request to the Assembly from the Lithuanian Government concerning:

⁷³ *League of Nations Official Journal*, March, 1923, p. 238. For Lithuania's request, see *ibid.*, p. 586.

⁷⁴ *Ibid.*, June, 1923, p. 670.

- (a) The Council's resolution of January 13, 1923;
- (b) Reference of certain questions to the Permanent Court of International Justice for an advisory opinion.

On September 27, 1923, the Assembly decided, "according to a desire expressed by the Lithuanian delegation, to refer" the question to the Fifth Assembly.⁷⁵

b) *Expropriation of Hungarian optants in Roumania.* This question was brought before the Council of the League of Nations by Hungary on April 20, 1923, and after a careful study M. Adatci (Japan) proposed on April 23, that the two governments be invited by the Council to enter into an agreement (*compromis*), of which he proposed a draft, referring to the court the question whether such expropriation constituted a violation of Article 63 of the treaty of Trianon or Article 3 of the Roumanian minorities treaty, and if so what measures should be taken by Roumania to indemnify the Hungarian nationals affected.⁷⁶ The proposal was accepted by Hungary, but declined by Roumania on the ground that while certain legal questions were involved the matter was much broader and included the whole Roumanian program of agrarian reform.⁷⁷ M. Adatci then suggested that the Council ask the court for an advisory opinion. A question arose as to whether in taking such action the unanimous votes of all representatives on the Council, including representatives of the disputant states, would be required. The Council finally decided that in the absence of "prospect of agreement" the question should be adjourned and M. Adatci should use every effort to secure agreement between the parties. Conversations were conducted at Brussels on May 26 and 27, under the presidency of M. Adatci, and the minutes contained declarations by both sides which offered a *modus vivendi*.⁷⁸ But on June 12, the Hungarian Government declined to proceed on this basis, and requested M. Adatci to renew the proposals he had made to the Council for resort to the court. The matter came before the Council on July 5, 1923, when Count Apponyi (Hungary) asked for a reference to the court. M. Titulesco (Roumania) relied on the Brussels accord in declining to agree to this course. Various members of the Council asserted its power to request an advisory opinion without the concurrence of the Roumanian representative,⁷⁹ but concurred in the decision that under the special circumstances no request should be made.

⁷⁵ *League of Nations Official Journal, Spec. Supp. No. 11*, p. 29. The matter was studied by both the first and sixth committees.

⁷⁶ The text of the proposed draft was published in *League of Nations Official Journal*, June, 1923, p. 703.

⁷⁷ See the very striking declarations of M. Titulesco (Roumania) in *League of Nations Official Journal*, June, 1923, pp. 606, 608.

⁷⁸ See the account in *League of Nations Official Journal*, August, 1923, p. 1012.

⁷⁹ Particularly Lord Robert Cecil (Great Britain) and M. Branting (Sweden). *League of Nations Official Journal*, August, 1923, p. 905.

c) *Italo-Greek conflict.* The murder of the Italian members of the Greek-Albanian Boundary Delimitation Commission, on Greek soil on August 27, 1923, led to the Italian occupation of Corfu on August 30 and an appeal by Greece to the Council of the League of Nations on September 1. On September 6, M. Quinones de Leon (Spain) submitted to the Council a series of proposals drafted in collaboration with several of his colleagues. One of these proposals provided for "the submission to the Permanent Court of International Justice, for decision under the rules of summary procedure, of the question of the indemnity to be paid by Greece." While these proposals were not adopted by the Council, a record of them was transmitted to the Conference of Ambassadors at Paris, which on September 7 adopted the following decision:

(7) The Greek Government will undertake to pay to the Italian Government, in respect of the murder of its delegates, an indemnity, of which the total amount will be determined by the Permanent Court of International Justice at The Hague, acting by summary procedure. The court will give judgment on consideration of the report of the commission specified in paragraph 6. This report will be transmitted by the Conference of Ambassadors, with its comments, to the court of justice.

The Greek Government will deposit forthwith, as security, at the Swiss National Bank, a sum of 50,000,000 Italian lire, such deposit to be accompanied by the following instructions: "to be paid over, in whole or in part, to the Italian Government, upon the decision of the Permanent Court of International Justice at The Hague."

This decision was modified by a later decision of September 13, in which the conference reserved to itself the decision as to Greece's fulfilment of the conditions laid down for her, and in the event of their non-fulfilment the decision as to measures to be taken which might include "the payment to Italy of a sum of fifty million Italian lire, and in that case the conference will request the Permanent Court of International Justice at The Hague to restore to Greece the security deposited by her, and no further application will be made to The Hague, as stated in paragraph 7 of the note of September 8th, unless any special application is made to the court by Italy for charges entailed by the occupation."

On September 26, the Conference of Ambassadors decided as a consequence of the negligence of the Greek Government in pursuing the authors of the crime, to award the entire fifty million lire to Italy. The resolution requested the court to order the Swiss National Bank to pay that sum to Italy. The money was paid, but it seems that no question was ever placed before the court and that the court took no action whatever.

On September 26, 1923, Lord Robert Cecil (Great Britain) proposed to the Council of the League of Nations to submit to the Permanent Court of International Justice certain questions regarding the interpretation of the Covenant, which had arisen in connection with the discussion of the Corfu

incident.⁸⁰ On September 22, the Council had asked a committee of jurists to formulate the questions. M. Salandra (Italy) doubted the competence of the Permanent Court of International Justice, inasmuch as the questions had a political character as well as a legal character. The proposal was discussed at some length in various meetings of the Council, in the course of which it was thoroughly recognized that the court should not be asked for opinions with regard to general questions, or, as it was put, should not be asked to write essays rather than to deal with disputes. As M. Salandra stated it, the court is not "an academy of jurists, but a magistrature." The Council finally decided on September 28 to set up a special commission of jurists to give an opinion on the questions before it. Each member of the Council was to nominate a jurist to serve on the commission, and the Director of the Legal Section of the Secretariat was to collaborate with the persons thus nominated. This inquiry by the special commission of jurists was accepted by the Council in lieu of any reference to the Permanent Court of International Justice.

ADVISORY OPINIONS

Of the nine questions which have come before the court in its first two years, eight have been on requests by the Council of the League of Nations for advisory opinions. This feature of the court's jurisdiction is thus proving to have an importance perhaps greater than many persons had anticipated. Its effect on the position of the court and on the nature of its jurisprudence may very well be given special consideration.

First of all, some difference may arise as to the nature of this function exercised by the court. Judge Moore has said that it "obviously is not a judicial function",⁸¹ though he found that the rules adopted by the court (Articles 71-74) "assimilate the process as far as possible to a judicial proceeding." This view seems to have been accepted by Secretary Hughes in an address before the American Society of International Law.⁸² Mr. Hammarskjöld thinks that "the whole idea of advisory opinions to be given by the court is in itself a novelty."⁸³ The conception of advisory opinions has also led to popular misunderstanding in America.

It is to be noted that the giving of advisory opinions by a court or by judges of a court is by no means new in the Anglo-American legal system.⁸⁴

⁸⁰ *Minutes of the Council, 26th session, P. V. 16, p. 3.*

⁸¹ 22 *Columbia Law Review* 507. Cf. Professor James Bradley Thayer's statement that the giving of advisory opinions "is not the exercise of the judicial function at all, and the opinions thus given have not the quality of judicial authority." 7 *Harvard Law Rev.* 153. And Judge Cardozo has more recently said that "the giving of such opinions is not the exercise of the judicial function." *Matter of State Industrial Commission*, (1918) 224 N. Y. 13, 16. See also 10 *Virginia Law Rev.* 152.

⁸² *Proceedings*, 1923, p. 84.

⁸³ 36 *Harvard Law Review* 715.

⁸⁴ The fullest consideration of the subject is *Departmental Cooperation in State Governments*, by Albert R. Ellingwood (MacMillan: New York, 1918). See also Thayer, *Legal Essays*, 42. H. A. Dubuque, "The Duty of Judges as Constitutional Advisers," 24 *Amer. Law Rev.* 369 (1890).

In England, the judges at one time gave opinions to the king. As late as 1760, such an opinion was given respecting the court-martial proposed to be held on Lord George Sackville.⁸⁵ These have been spoken of as "extra-judicial."⁸⁶ The House of Lords may still request the judges to give opinions,⁸⁷ though it has not frequently done so in late years. Some opinions given by the judges have had great influence in the development of the law.⁸⁸

Since 1780, the constitution of Massachusetts has provided for advisory opinions to be given by the justices of the Supreme Judicial Court, "upon important questions of law and upon solemn occasion", at the request of either branch of the legislature, or of the Governor and the Council.⁸⁹ Opinions are frequently given, under this provision.⁹⁰ They are the "opinions of the justices", and not of the court, though they are published in the Massachusetts reports of the opinions of the court. It is said that the justices do not sit as a court, but as individuals.⁹¹ They act "without the benefit of argument", and it is not clear that briefs may be filed by interested persons. Hence *stare decisis* does not apply; and if a question upon which an opinion is given arises in later litigation, the earlier opinion is not to be relied on and the matter is to be reexamined "with the effort carefully to guard against any influence flowing from our previous consideration."⁹² The opinion is to be regarded as "open to reconsideration and revision; yet it imports a view resting upon judicial consideration and examination of the subject."⁹³ In a recent instance, the court has rendered a decision counter to a previous opinion of the justices.⁹⁴ Of course a previous decision might be overruled, but this is something more. If the opinion were to be regarded as the opinion of the court, it would not be subject to *stare decisis*. It may nevertheless possess a judicial character.

In various other states, advisory opinions are given by the judges of the state supreme court. The constitution of New Hampshire has provided for

⁸⁵ See 2 *Eden (Appendix)* 371. The judges put in a *caveat*, however, that "we should be ready, without difficulty, to change our opinion, if we see cause, upon objections that may be then laid before us, though none have occurred to us at present which we think sufficient."

⁸⁶ (1878) 126 Mass. 561.

⁸⁷ At least there is a dictum to this effect in *Attorney-General for Ontario v. Attorney-General for Canada* [1912] A. C. 571, 586. Of course, a judgment of the Judicial Committee of the Privy Council is "a statement of the reasons which determine them in 'humbly advising' the King to give effect to their decision." Anson, *Law and Custom of the Constitution*, Vol. II, p. 293 (4th ed.).

⁸⁸ For instance, the opinions in *M'Naghten's Case*, (1843) 10 *Clark & Fennelly* 200.

⁸⁹ Constitution of Massachusetts, Chap. III, Art. II.

⁹⁰ Volume 237 of the Massachusetts reports contains five such opinions; Vol. 239, two; and Vol. 240, three.

⁹¹ *Rugg, C. J.*, in *Loring v. Young*, (1921) 239 Mass. 349, 361, 132 N. E. 65, 68.

⁹² *Young v. Duncan*, (1914) 218 Mass. 346, 351, 106 N. E. 1, 4.

⁹³ *Rugg, C. J.*, in *Loring v. Young*, (1921) 239 Mass. 349, 361, 132 N. E. 65, 68. See also *Perkins v. Westwood*, (1917) 226 Mass. 268, 272, 115 N. E. 411.

⁹⁴ *Loring v. Young*, (1921) 239 Mass. 349, 132 N. E. 65.

such opinions since 1784,⁹⁵ the constitution of Maine since 1820,⁹⁶ and the constitution of Rhode Island since 1842.⁹⁷ The Missouri constitution of 1865 contained a similar provision,⁹⁸ but it was not retained in the constitution of 1875. In Florida, the Governor has been authorized to require the opinion of the justices on certain questions since 1868,⁹⁹ and in South Dakota since 1884.¹⁰⁰ The constitution of Colorado, since 1886, has imposed the duty to give advisory opinions on the court itself, not simply on the judges; so that the Colorado court has declared that its responses "have all the force and effect of judicial precedents."¹⁰¹ For this reason, doubtless, it has narrowly confined the field within which the competence will be exercised.¹⁰²

A statute in Delaware, dating from 1852, puts on the chancellor and judges a duty to give opinions to the Governor on certain questions, though few opinions seem to have been requested.¹⁰³ In Alabama, the legislature itself has recently provided that the Governor or either house of the legislature may obtain the opinion of the justices of the Supreme Court on constitutional questions. The statute provides however that the opinions are not to be binding, even on the justices giving the opinions, though it authorizes the justices to request briefs from the Attorney-General and to receive briefs from "other attorneys as *amicus curiae*."¹⁰⁴ The validity of this act has recently been "affirmed" by five of the seven justices.¹⁰⁵

In Oklahoma, in a criminal case where sentence of death has been imposed and where no appeal is taken, the judges of the Criminal Court of Appeals are empowered by statute to give an opinion to the Governor.¹⁰⁶ "The questions presented are: Has there been an observance of all the formalities of law essential to the taking of human life, or has the trial, conviction and sentence of death been in accordance with the law of the land?"

A number of Canadian courts possess jurisdiction to give advisory opinions, and the Judicial Committee of the Privy Council has decided that a statute authorizing the Governor General in Council to request opinions of

⁹⁵ A recent opinion may be found in (1919) 79 N. H. 535, 112 Atl. 525.

⁹⁶ A recent opinion may be found in (1921) 120 Maine 566.

⁹⁷ A recent opinion may be found in (1922) 44 R. I. 275.

⁹⁸ See *Missouri General Statutes of 1868*, p. 36.

⁹⁹ See (1919) 78 Florida 156, 82 Southern 606.

¹⁰⁰ See *In re Rural Credits Law*, (1917) 38 So. Dak. 635, 162 N. W. 536; *In re Opinion of the Judges*, (1920) 43 So. Dak. 645, 180 N. W. 64.

¹⁰¹ (1889) 12 Colo. 469. But see Ellingwood, *op. cit.*, p. 189.

¹⁰² For the limits in general, see Ellingwood, *op. cit.*, c. 3.

¹⁰³ According to Ellingwood, p. 69. An opinion was recently given *In re School Code of 1919*, (1919) 30 Del. 406, 108 Atlantic 39. In this instance, the chancellor and judges received briefs and heard arguments of counsel.

¹⁰⁴ The Act was approved on February 13, 1923. See 10 *Virginia Law Rev.* 150.

¹⁰⁵ *In re Opinions of the Justices*, (1923) 96 So. 487. See, however, *Re Application of the Senate*, (1865) 10 Minn. 78.

¹⁰⁶ Bunn, *Compiled Statutes of 1921*, §2786. See *In re Blakely*, (1921) 195 Pac. 146; *In re Ledbetter*, (1921) 195 Pac. 149.

the Supreme Court of Canada was not repugnant to the British North America Act.¹⁰⁷ Lord Loreburn repudiated a suggestion that the giving of advisory opinions could deserve to be "stigmatized as subversive of the judicial function."

Is a court exercising a judicial function when the judges, acting not as individuals but as a court, give advisory opinions? What are the essential attributes of *judiciality*? It can hardly be necessary that an actual contest between public or private litigants be before the court. The importance of such a contest would seem to be the narrowing of issues and the threshing out of the questions they involve. But both of these ends may be achieved in other ways.

In passing upon the constitutionality of a statute, American courts frequently act under circumstances which render the actual contest between litigants of little significance. Thus in New Jersey a special procedure was invented for determining whether a statute had been duly enacted, and the Supreme Court held that though there was no litigation *inter partes*, there was a judicial question for which the legislature could create a special method of judicial procedure.¹⁰⁸ The appeal allowed the State in criminal cases in some jurisdictions is in essence the same kind of proceeding; it has as its object the eliciting of "an authoritative exposition of the law upon disputed questions."¹⁰⁹ It would hardly be denied that this is a *judicial* proceeding.

If a legal question arises in connection with some actual problem, upon the solution of which immediate action depends, if it is put to a court by a competent authority, if it is carefully argued before the court by representatives of interests which might be affected by the answer, and if the court proceeds to deliberate upon it in a serious way and gives to the results of its deliberation the same solemn notoriety which it gives to its decisions in formal litigations *inter partes*, then the giving of such an opinion may surely be said to have the requisites of a judicial proceeding.

The advisory opinions which the Permanent Court of International Justice has given have all been *judicial* opinions in this sense. Each of them has related, first of all, to some legal question of defined limits. The Council has not sought advice in general. It has referred to the court specific questions, all of which have involved the interpretation of treaties. Moreover, all of these questions have related to problems which have arisen in practical affairs. The first three related to the functioning of the International Labor Office.¹¹⁰ The fourth related to a pending dispute between

¹⁰⁷ Attorney-General for Ontario v. Attorney-General for Canada, [1912] A. C. 571. It is to be noted that Lord Finlay, then Sir Robert Finlay, K. C., now a judge of the Permanent Court of International Justice, was of counsel attacking the statute.

¹⁰⁸ In re Public Utility Board, (1912) 83 N. J. L. 303, 307.

¹⁰⁹ State v. Mackey, (1891) 82 Iowa 393; State v. Gilbert, (1908) 138 Iowa 335.

¹¹⁰ It may be thought that the third question did not relate to any pending problem, however, for the Director of the International Labor Office stated that "the International

Great Britain and France; the fifth to a dispute between Finland and Russia; the sixth to the expropriation of German colonists actually begun; the seventh to the construction to be placed on a treaty in a situation demanding action under it; and the eighth to a pending boundary dispute between Poland and Czecho-Slovakia.

In every case, the submission has been effected by a legally competent body in a legally proper way.¹¹¹ In every case, briefs have been submitted. In every case, the court has heard arguments from duly accredited agents or representatives of interests involved. Five such representatives appeared before the court in connection with its deliberation on the first opinion requested; seven, on the second; two, on the third; two, on the fourth; two, on the fifth; two, on the sixth; and two, on the seventh. Under the rules of court (Article 72), the court requires an exact statement of the question, and (Article 73) notice of the request for the opinion is given not only to all members of the League and other states mentioned in the Annex to the Covenant, but also to "any international organizations which are likely to be able to furnish information on the question." The object of this is quite clearly to enable interested states or organizations to apply to be heard in argument before the court.

The announcement of each opinion takes place at a public session of the court, where the opinion is read aloud. A copy is then sent to the Secretary General of the League, who communicates the text to all members of the League and to all states mentioned in the Annex to the Covenant. The opinion is at once published, also, and copies are placed on sale to any individual.

Under these circumstances, it would seem clear that the court is performing a judicial function when it gives advisory opinions to the Council of a League of fifty-four nations. The question has achieved added importance because of recent proposals for depriving the court of this jurisdiction.¹¹² As to the court's own attitude toward this function there can be no doubt since its refusal to give an opinion on the East Carelian question and its statement that "the court, being a court of justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a court."

Labor Organization has never considered any intervention" with reference to agricultural production. But a limited intervention in that direction had been proposed by M. Zumeta (Venezuela) at the Third International Labor Conference, so that the problem had immediate importance. See *League of Nations Official Journal*, August, 1922, p. 897. Moreover, the court was thoroughly alive to the necessity of confining its opinion to a definite question relating to a specific problem. See the opinion in Series B, No. 4, p. 59.

¹¹¹ This is the significance of the court's reception of the letter of the Secretary-General of the League, of October 4, 1922, relating to the Tunis-Morocco question.

¹¹² See President Harding's address of June 21, 1923, in this JOURNAL, Vol. 17 (1923), pp. 533, 536.

LANGUAGES BEFORE THE COURT

It is provided in the court's statute (Article 39) that "the official languages of the court shall be French and English." If the parties agree that the case shall be conducted in French or in English, the judgment will be delivered in the same language; and in the absence of such agreement, the decision is to be given in both languages, the court determining which is to be authoritative. The court may also authorize the use of another language, at the request of the parties.¹¹³ All of the proceedings before the court to date have been conducted in French or in English, except the statements made by M. Schiffer in the *Wimbledon* case and in connection with the two questions as to minorities in Poland, which were in German. All of the eight advisory opinions, and the judgment in the *Wimbledon* case, have been given in French and English. In five cases the court has designated the French text as authoritative, and in four cases the English text.¹¹⁴

On March 29, 1923, the British Government drew attention in a memorandum to the "desirability of candidates for election to the Permanent Court of International Justice having a working knowledge of both French and English."¹¹⁵ This was considered by the Council on April 17, 1923, when M. Adatei (Japan) proposed a resolution on the subject, and the Council decided to circulate the British memorandum.¹¹⁶ Later, the Spanish Government drew attention to the position it had consistently maintained in favor of the employment "of languages other than French and English," and stated that "it considers that a working knowledge of English and of French should not be considered as an essential qualification for election to the Permanent Court of International Justice, but that in choosing the judges, the main consideration should be their legal knowledge and high moral character, and that they should be allowed perfect freedom to acquire their knowledge when and in whatever manner they choose."¹¹⁷

PUBLICATIONS OF THE COURT

The court has inaugurated a very excellent scheme for issuing its publications.¹¹⁸ Four series have been established. Series A will be a collection of judgments; number 1 of this series gives the judgment in the *Wimbledon* case. Series B will be a collection of advisory opinions, of which eight have now been published. In Series C, the acts and documents relating to the judgments and advisory opinions given by the court will be published: num-

¹¹³ See also Article 44 of the rules of court.

¹¹⁴ Yet Mr. Gregory stated in this JOURNAL, Vol. 17 (1923), p. 305, that "the closing announcement as to the English and French versions 'the French text being authoritative' sounds again for us the exotic note."

¹¹⁵ *League of Nations Official Journal*, June, 1923, p. 629.

¹¹⁶ *Ibid.*, p. 555.

¹¹⁷ *Document C. 479. M. 198. 1923. V.*

¹¹⁸ See this JOURNAL, Vol. 17 (1923), p. 836.

ber 1 contains the documents relating to the first three advisory opinions and number 2 contains the documents relating to the fourth advisory opinion. In Series D, acts and documents concerning the organization of the court will be published; number 2, the first to appear, deals with the preparation of the rules of court and contains the minutes of meetings held during the preliminary session of the court, from January 30 to March 24, 1922; number 3 contains extracts from international agreements affecting the jurisdiction of the court.

The protocol of signature, statute and rules of court have not been issued in the official publications of the court, though a convenient volume containing all of them was put out in 1922 by the *Institut Intermediaire International*.¹¹⁹ Nor do the publications include, as yet, the cases and counter cases and other documents filed by parties to contested cases or by governments or organizations interested in questions submitted for advisory opinions. On January 24, 1923, the Registrar addressed a letter to the Secretary-General who circulated it to all members of the League, in which the court "expressed the wish that, a) governments filing printed documents of procedure should place at the disposal of the court, beyond the number of copies required for the purposes of the procedure, a further number of copies printed on inexpensive paper which, with the consent of the interested governments, could be distributed to scientists and scientific organizations, together with the court's own publications; b) that for printed documents of procedure filed by governments with the Permanent Court of International Justice a shape and size should be adopted similar to that used by the court for Series A and B of its publications."¹²⁰

BUDGET OF THE COURT

The budget of the court forms a separate part of the budget of the League of Nations. The budget of the League for 1922 provided 1,500,000 gold francs for the expenses of the court. As from February 20, 1922, the President and Registrar of the court assumed control of its funds, and the expenses for 1922 were met by the "permanent imprest system." On February 16, 1922, the President suggested an arrangement for 1923,¹²¹ which was considered by the Council on May 11, 1922.¹²² On July 17, 1922, the Council resolved to propose to the Assembly that the expenses of the court be incorporated in the general budget of the League, and that "from each contribution paid by the members of the League of Nations into the general funds, the court shall be granted a share corresponding to the proportion which its own budget bears to that of the League of Nations, it being understood that,

¹¹⁹ But see Mr. Hammarskjöld's statement in 36 *Harvard Law Review* 725, which would indicate that this publication should be considered as number 1 of Series D.

¹²⁰ *Document C. 159. M. 83. 1923. V.*

¹²¹ See *League of Nations Official Journal*, June, 1922, p. 565.

¹²² *Ibid.*, pp. 520, 564.

when necessary, the court may also be granted, in the same proportion, advances from the working capital fund."¹²³

The Third Assembly approved a set of regulations for the financial administration of the League of Nations,¹²⁴ defining the financial autonomy of the court, with the result according to Mr. Hammarskjöld, that "the budget as approved by the court need not pass through the Council but will pass direct to the Assembly for approval."¹²⁵

In determining the budget for 1924, the Registrar submitted estimates, doubtless with the approval of the court or its President, to the supervisory commission of the League. The latter recommended certain reductions. Thereupon, on June 23, 1923, the court adopted a resolution, expressing the "opinion that certain of the reductions recommended by the commission in the estimates submitted by the Registrar appear to be excessive from the standpoint of the efficient working of the court's services." But "having regard to the necessity of endeavoring to effect economies in every direction under the conditions at present prevailing throughout the world," the court adopted the budget estimates as passed by the commission, "on the understanding that the court reserves the right, if necessary, to ask the Fourth Assembly for supplementary credits."

The budget of the court for 1922 was 900,000 florins, of which 709,914.27 florins were expended; for 1923, 935,625.70 florins. For 1924, 921,739.83 florins have been allowed.¹²⁶

PENSIONS FOR THE JUDGES

The statute of the court provides (Article 32) that:

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the court.

On January 13, 1922, the Council directed the Secretary-General to "inform the Council concerning the measures to be taken to regulate the question."¹²⁷ The Secretary-General conducted an investigation of the system of pensioning national judges in various countries, as well as the judges of the Egyptian Mixed Tribunals, and reported to the Council on July 4, 1923.¹²⁸

On July 7 the Council requested the supervisory commission to report a proposal which might be laid before the Assembly. The supervisory com-

¹²³ *League of Nations Official Journal*, August, 1922, pp. 787, 829.

¹²⁴ *Records of Third Assembly, Plenary Meetings*, Vol. II, p. 207. As amended by Fourth Assembly, Document C. 663. M. 266. 1923. X.

¹²⁵ 36 *Harvard Law Review* 724.

¹²⁶ See Document C. 668. M. 268. 1923. X.

¹²⁷ *League of Nations Official Journal*, February, 1922, p. 102.

¹²⁸ *Ibid.*, August, 1922, pp. 881, 936, 989.

mission at its seventh session decided to entrust a further investigation of the question to Lord Meston (India) and Dr. Neberbragt (Netherlands).¹²⁹ Meanwhile an item on contribution to the pension fund is carried in the budget for 1924.¹³⁰

ELECTION OF JUDGE PESSOA

The death of Judge Ruy Barbosa on March 1, 1923, created a vacancy in the personnel of the court. Judge Barbosa had been prevented by illness from attending any meeting of the court, and had not actively participated in its work.¹³¹ On April 17, 1923, the Council decided that the election of his successor should be included in the agenda of the Fourth Assembly and of a meeting of the Council to be held during the session of the Assembly.¹³² The national groups in the Permanent Court of Arbitration, belonging to members of the League or to other states mentioned in the Annex to the Covenant, were invited by the Secretary-General to make nominations, as were also additional national groups of members of the League not represented in the Permanent Court of Arbitration.¹³³

Thirty-one nominees were thus named on the list placed before the Assembly and Council.¹³⁴ Thirty-eight national groups participated in the nominations, and twenty-two of them nominated M. Epitacio da Silva Pessoa, ex-President of Brazil, ex-Delegate to the Peace Conference, and ex-Judge of the Federal Tribunal. The voting took place in the Assembly and Council on September 10, 1923, and on the first ballot M. Pessoa received a majority of the votes cast in both bodies.

A notable feature of this election was the nomination made by the group representing the United States in the Permanent Court of Arbitration, Messrs. George Gray, John Bassett Moore, Elihu Root and Oscar Straus. An unfortunate incident had delayed the invitation which had been sent to this group to make nominations in connection with the original election of the judges in 1921. The invitation was despatched from Geneva on June 4, 1921, being sent to the Secretary of State for transmission to the American members. But it had not been received by the latter on August 12, when a fresh invitation was sent from Geneva. The time was then very short. On September 16, 1921, the Secretary General notified the Assembly and the Council of the receipt of the following telegram from the members of the American group:

¹²⁹ Document A. 43. 1923. X.

¹³⁰ Document A. 4 (b) (2). 1923. X.

¹³¹ This and the fact that Deputy-Judge Wang first sat with the court on June 15, 1923 are the only foundation for a very surprising statement by Mr. Gregory in this JOURNAL, Vol. 17 (1923), p. 306, that "some of these judges after a lapse of a year have not yet appeared or functioned with the court, yet it is understood have faithfully drawn their stipends."

¹³² *League of Nations Official Journal*, June, 1923, p. 554.

¹³³ In accordance with Article 4, paragraph 2, of the court's statute.

¹³⁴ Two nominees, MM. Alvarez (Chile) and Politis (Greece), declined the candidacy.

Considering that our appointment by the President as members of the Permanent Court of Arbitration was, under the Hague Convention of 1907, to perform the functions contemplated in that convention and that your invitation to nominate candidates for judges of the new Permanent Court of International Justice is under another treaty to which the United States is not a party, and in respect of which no authority has been conferred upon us, we reluctantly reached the conclusion that we were not entitled to make official nominations for the new court. We exceedingly regret that the announcement of this conclusion has been unavoidably delayed.¹³⁵

But this position was reversed in 1923, when the American group nominated M. Pessoa, acting under the same treaty on which they had previously based their incompetence.

CHAMBER FOR SUMMARY PROCEDURE

The Chamber for Summary Procedure is formed annually, according to the statute (Article 29), and the tenure begins on January 1, according to the rules of court (Article 14). For 1922, the members were Judges Loder, Weiss and Huber, with Lord Finlay and Judge Anzilotti as substitutes; for 1923, the members were Judges Loder, Weiss and Moore, with Lord Finlay and Judge Altamira as substitutes. On September 15, the Registrar announced that the chamber for 1924 would consist of Judges Loder, Weiss and Huber, with Lord Finlay and Judge Altamira as substitutes.¹³⁶

RECEPTION OF THE COURT

The support of the court is being extended continually. On May 15, 1923, forty-six states or members of the League had signed the protocol of signature.¹³⁷ On August 1, 1923, the protocol was signed by a forty-seventh state, Hungary.¹³⁸ Thirty-five states or members of the League had ratified the protocol of signature on May 15, 1923, and a thirty-sixth, Latvia, has since ratified. On that date, also, twenty states had accepted the optional clause providing for compulsory jurisdiction, but it has since been accepted by a twenty-first state, Latvia.¹³⁹

In addition to this formal action on the constitutive instruments of the

¹³⁵ See *Document A. 92. 1921 V.*

In an address before the American Society of International Law, on April 26, 1923, Mr. Root stated that "the members of the American group, however, other than Mr. Moore, did not hesitate to express their unanimous personal opinion that the wisest possible choice among the citizens of the United States for membership in the court would be Mr. Moore himself." How this opinion was expressed, and to whom, is not disclosed by any documents available to the writer.

¹³⁶ *Document C. 623. M. 234. 1923. V.*

¹³⁷ See publications of the court, Series D, No. 3, pp. 12 ff. See, also, the *League of Nations Treaty Series*, Vol. VI, p. 379; Vol. XI, p. 464.

¹³⁸ See *Document A 10 (a). Annex 1923*, entitled *Progress of International Conventions and Engagements*.

¹³⁹ *Document C. 624. M. 235. 1923. V.*

court itself, the prestige of the court is being increased continually by accretions to its jurisdiction by reason of references in various treaties and conventions. The volume recently published by the court¹⁴⁰ indicates the extent of such references up until May 15, 1923. Since that date, numerous international treaties and engagements have mentioned the court. Among these are the Latvian minorities declaration to the Council of the League on July 27, 1923,¹⁴¹ the resolution of the Council of the League of Nations relating to the protection of minorities in Esthonia, of September 17, 1923;¹⁴² the convention for the suppression of the circulation of and traffic in obscene publications, September 12, 1923;¹⁴³ and the convention relating to the simplification of customs formalities, of November 3, 1923.¹⁴⁴

The professional comment on the establishment of the court and on its work, continues to be almost uniformly favorable.¹⁴⁵

THE UNITED STATES AND THE COURT

Aside from the individual participation of Mr. Root and Dr. Scott in the work of the Committee of Jurists which framed the statute of the court, the United States had no part in establishing it. On July 13, 1922, Secretary Hughes stated that he saw "no prospect for any treaty or convention by which we should share in the maintenance of the court until some provision is made by which, without membership in the League, this Government would be able to have an appropriate voice in the election of the judges."¹⁴⁶ On October 30, 1922, he expressed his belief "that suitable arrangements can be made for the participation by this Government in the election of judges of the international court which has been set up, so that this Government may give its formal support to this court as an independent tribunal of international justice."¹⁴⁷

On February 17, 1923, Secretary Hughes addressed a letter to the President, recommending that the Senate be asked for its advice and consent to the adhesion on the part of the United States to the protocol of December 16,

¹⁴⁰ Series D, No. 3, entitled *Extracts from International Agreements affecting the Jurisdiction of the Court*. See also, the writer's article in this JOURNAL, Vol. 17 (1923), p. 24, and Professor Blociszewski's article in the *Revue Generale de Droit International Public*, 1922, p. 23.

¹⁴¹ *League of Nations Official Journal*, August, 1923, p. 933.

¹⁴² *Minutes of Council*, 26th session, P. V. 13, p. 21.

¹⁴³ *Document C. 630. M. 236. 1923. IV.*

¹⁴⁴ *Document C. D. I. 96 (1) 1923.*

¹⁴⁵ See 1 *Cambridge Law Journal* 29; Ernest Lemonon, in 49 *Journal du Droit International (Clunet)* 761; 1 *Boston University Law Review* 6; Gabrielle Salvioi in *Rivista di Diritto Internazionale*, April, 1923, p. 11; 9 *American Bar Assn. Journal*, 160; W. L. Frierson in *Maryland State Bar Assn. Report for 1922*, p. 74; Charles H. Carey, in 2 *Oregon Law Review* 205. See also Judge de Bustamante's interesting paper in 4 *Revista de Derecho Internacional* 5. For a partial bibliography, see the *Advocate of Peace*, Dec., 1923, p. 438.

¹⁴⁶ *New York Times*, July 15, 1922, p. 1.

¹⁴⁷ *Ibid.*, October 31, 1922, p. 4.

1920, on four conditions and understandings.¹⁴⁸ President Harding acted in accordance with this recommendation on February 24, 1923, transmitting a copy of Secretary Hughes' letter. The Senate referred the matter to the Committee on Foreign Relations, which requested further information. On March 2, 1923, the President furnished such information, transmitting Secretary Hughes' letter of March 1.¹⁴⁹ No definitive action was taken by the Senate before its adjournment on March 4, however. In an address at St. Louis, on June 21, 1923,¹⁵⁰ President Harding seems to have modified his own views in some degree. In his message of December 6, 1923, President Coolidge commended President Harding's February proposal "to the favorable consideration of the Senate."

During the later months of 1923, the United States has renewed arbitration treaties with Great Britain (June 23), France (July 19), Japan (August 23), Portugal (September 5), and Norway (November 26). "At the time of the signing of the agreement [in each case] notes were exchanged to the effect that in case the Senate shall give its assent to the President's proposal for the participation by the United States in the support of the Permanent Court of International Justice, the two governments will consider the making of an agreement under which the disputes, of the nature described in the treaty, could be referred to the Permanent Court of International Justice."¹⁵¹

In his letter of February 17, 1923, Secretary Hughes proposed certain "conditions and understandings" on which the American adhesion should be based, and he stated that "the attitude of this Government will thus be defined and communicated to the other signatory Powers whose acquiescence in the stated conditions will be necessary." It was clearly Mr. Hughes' view that such acquiescence would be a sufficient acceptance of the American conditions and understandings, and that no amendment of the formal documents creating the court would be necessary. The juridical basis for this view had been previously outlined by the writer,¹⁵² and the view seems to have been generally accepted in the United States.

But Mr. Hughes' proposal does not seem to have been understood by some writers in other countries. Professor Eugène Borel has recently published an article in which he states that what is required is a "revision of the Covenant aiming to permit the Assembly and the Council to associate with themselves, by a concurrent vote and for a special and expressly determined question, the delegation of a state which, without forming a part of the League, would nevertheless be invited by this vote to act as a collaborator

¹⁴⁸ Senate Document No. 309, 67th Congress, 4th session. 64 *Cong. Record*, 4508. Reprinted in this JOURNAL, Vol. 17 (1923), p. 332.

¹⁴⁹ Senate Document No. 342, 67th Congress, 4th session. Reprinted in this JOURNAL, Vol. 17 (1923), p. 339.

¹⁵⁰ Reprinted in this JOURNAL, Vol. 17 (1923), p. 583. Cf. comment by Mr. George A. Finch, *ibid.*, p. 521.

¹⁵¹ *Communiqués* issued by the Department of State. See also, *U. S. Treaty Series*, No. 674.

¹⁵² In an article in *Foreign Affairs*, December 15, 1922, pp. 80-81.

in the matter in question."¹⁵³ But he does not appear to have taken account in any way of Mr. Hughes' suggestion as to "acquiescence."

A more recent and better-considered comment on the method by which American adhesion might be effected is that of Dr. Hans Wehberg,¹⁵⁴ who finds that while Mr. Hughes' first, third and fourth conditions involve no modification of the court statute, his second condition as to the election of judges involves the kind of change which ought not to be made in a treaty without formal revision. Dr. Wehberg therefore suggests that the Assembly of the League undertake a revision of the court statute. But he has not analyzed the arguments for the sufficiency of the acquiescence alone, and those arguments seem quite irrefutable. Certainly it is desirable, if possible, to avoid the cumbersome process of amending the statute of the court, which would doubtless require affirmative action by each of the signatories to the protocol.

CONCLUSION

The Permanent Court of International Justice has made a promising start on its career. In two years, it has handed down nine opinions, all relating to difficult problems which involved vexed questions of international law and threatened to disturb international understanding. In each case, the court's opinion has met with general satisfaction. In each case the states concerned have at once set about to act upon the court's pronouncement of the law. On the administrative side, the court has made steady progress toward increasing its efficiency and smoothing out its difficulties. The influence of the court has been steadily growing. With forty-seven signatories to the protocol under which it exists, with lawyers everywhere viewing its record with satisfaction and hope, the court promises a fulfilment of the world's long-cherished desire.

The American delegation to the Hague Peace Conference of 1907 reported, "A little time, a little patience, and the great work is accomplished." The prophecy approaches fulfilment.

¹⁵³ This JOURNAL, Vol. 17 (1923), pp. 429, 436.

¹⁵⁴ "*L'Amérique et la Cour Permanente de Justice Internationale*," 4 *Revue de Droit International et de Législation Comparée*, 3 series, p. 179.

THE CODIFICATION OF INTERNATIONAL LAW

SOME PRELIMINARY QUERIES

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The task of codifying international law is so vast, the subject thus named so uncertain in nature and in limits, language so imperfect and misleading, and human reason so puny, that a person who addresses himself to the business with the intention of elaborating concrete expressions of the law finds himself with no solid foothold to start from, no certain direction to take, and no clear conviction as to how best to work. In the present attempt to study the problem of codification of international law in a few of its aspects, the writer has taken one topic only, the treaty, thinking that here we have phenomena in plenty and that discussion thereof may be a fruitful preliminary procedure. For even here, at the very outset, we are confronted with primary questions which throw us back to the very threshold as it were of the whole subject.

A treaty is an agreement between states. How about the converse? Can we say that every agreement between states is a treaty? An agreement may be oral. May a treaty be oral? We daily see states as well as individuals regulating their conduct to discharge obligations which they consider only moral and which have their sources in agreements of very informal nature, which they sometimes call understandings.

Where is the line to be drawn between international law on the one side, and other systems or parts of systems which import duties and which exist outside of international law though perhaps supporting it, such as international morality, ethics, etiquette? That international law has a powerful sanction in public opinion has been clearly shown, but it is also true that international morality and even international etiquette have the sanction of public opinion to promote their observance. Sometimes public opinion is stronger in support of some point of international etiquette than it is in a matter of international law, quite as it acts in relations between individuals. The fact that this sanction exists is therefore not a test of the nature of an obligation as regards its quality as a legal obligation. What is a true test? Sanction of legalized community force, we may agree, is a practical test of national law, but legalized community state force does not exist, and so we have not this practical test for international law. It has been argued that because of the lack of this community state force inter-

national law is not law. But must a test be an ingredient of the thing tested? At any rate, if international law be not law, it is something that goes by the name of international law, though it may be international *x*, a something which all agree exists. How it is to be given practical effect in the conduct of unwilling states is a question of expediency, a starting-point for more law, which does not affect the nature of what international law already exists. The world is clamoring for a lucid statement of existing international law, and the march of progress is demanding additions thereto. A code is considered a good vehicle for lucid expression, and so a code is demanded. Now, in order to frame even a part of a code of international law, it seems from what has been said necessary first to determine the limits of the code with at least sufficient definiteness for practical progress. And to determine the limits of the code implies in substance determining the limits of international law and perhaps something else in form.

To "codify international law." What does this mean? Clearly it does not mean to codify the science of international law, for the science of international law is of greater content than international law. What, then, is embraced in the science of international law that is not embraced in international law? The works of jurists contain not only statements of international law but also expositions of the foundations of that law. If we are to codify international law, not the science of international law, we need to know where the foundations end and the law structure begins. Many of the so-called principles and rules of international law may reside only in the science.

One boundary, which it is necessary to draw, will exclude facts of existence and processes of reasoning and the moral law, in which we may for our purposes conveniently group all "oughts" that are not legal ones, so far as they are merely foundations of international law but not included within its body. One may be morally bound to certain conduct regardless of the law; he may be also legally bound to the same conduct. His act then has a two-fold aspect, but the moral obligation is distinct from the legal obligation. There will be a superadded moral obligation springing from the fact that the act is prescribed by law. Again, that two plus two make four is not international law obviously, and nobody would assert it to be so; but there are numerous mere dictates of reason that, because they are applied to the matter of international law, are often thought to be international law. Take the following statement regarding interpretation of treaties: "Ordinary words must be taken in an ordinary sense and technical words in a technical sense." This statement properly finds place in a work on the *science* of international law, for the science deals not only with international law itself but also with its foundations, its method and its purposes. But is it not merely a dictate of reason? If, however, this illustration be inaptly chosen, there must be, from the very fact that international law is not identical in scope with the *science* of international law, many dictates of reason, or

demands of equity, or morality, that lie outside the former and within the latter. We are not seeking to formulate a systematic exposition of the science of international law, but a statement of the rules of international law, *i.e.*, rules which are international law.

A second line, which it may be advisable to draw, would exclude those conclusions which follow the provisions of the code directly as corollaries. If obvious deductions from code provisions are not excluded, the code will become a digest. For example, to say that ratification of a treaty by a nation is necessary to render it binding where such ratification is expressly made a condition in the treaty, so obviously follows from the rule that mutual consent is necessary to give rise to an obligation, that its inclusion would seem to be superfluous. Obvious deductions from general rules applied to special sets of facts are numberless. On the other hand, code rules or principles in combination applied to a set of facts and circumstances will by a process of reasoning often result in another rule of international law which should be included in the code for the reason that it is not an *obvious* deduction. What is an obvious deduction?

Besides the questions of content, there are questions of form that must be resolved at the outset to avoid confusion. So far as possible, words should be definite in meaning. Ambiguity should not be tolerated. Constructions should be simple and direct. A few remarks on special points of expression follow. The difficulties of form alone are of great magnitude.

The words ordinarily used to express legal relations are right, duty, obligation, power, privilege, disability, immunity, capacity. Of these, some are correlatives of others, some are opposites of others. The words duty and obligation are synonymous, both being used in law and ethics. It may be desirable to confine one to the domain of law, and the other to the domain of ethics, but that is not present usage. It seems clear that in a code it is best to use the same word for the same idea throughout, and without expressing any preference between "duty" and "obligation", I am using the latter only. In our draft articles an obligation means always an international legal obligation, an obligation of international law. Obligation is correlative of right. Which of these should, in general, be the central idea of a code article? Does it not seem that the word obligation should be selected as the simpler? Just as municipal law is primitively a command to individuals to do or not to do a certain thing, not because some other individual has a *legal* right, but in the general interest, wherefrom the other individual derives a right as a consequence of the obligation, so international law imposes an obligation upon a state in the general interest and therefrom results the correlative right. The legal right may be co-equal with the legal obligation in duration, but it is a consequence.

The articles, too, of a code should be in the simplest form. We find in text-books such statements as this, "Treaty rights and obligations in contravention of international law are void." The imperfections of language are

manifest in this statement. The subject of the sentence, "Treaty rights and obligations" assumes their existence, and the predicate asserts their non-existence, unless the word "void" can mean that although they exist, they have no legal effect. But that meaning is inconsistent with the meaning of obligation. What are the essential facts here assumed? First, a state, secondly, its attempt to assume an obligation in contravention of international law, thirdly, the means it employs, a treaty. Is it not the second of these that is abortive in international law? Suppose the state makes a like attempt by other means than treaty; would not the same lack of legal effect attach to that attempt? Suppose we say then, "A state has no power (or is not competent) to assume an obligation in contravention of international law." Is not this more general statement recognized as true? It does not mention means, and so includes all means. If we enlarge it to read, "A state is not competent to assume an obligation in contravention of international law by means of treaty" we have a corollary. A question for the codifier, when drafting a section concerning treaties, is whether this corollary should be included here and the general proposition elsewhere in the code, or the general proposition put here, or the general proposition put elsewhere and the corollary omitted altogether.

Among grammatical constructions to be used with great care is the passive voice, which is frequently met with and is the cause of confusion through complexity of thought. The passive voice assumes the existence of an active voice and the existence of an actor. A passive construction which seems sufficiently clear in meaning is often perceived to be vague when attempting to resolve it into its component ideas by means of an active construction. An intransitive verb is sometimes a veiled passive.

Finally, the code should be symmetrical, and it is therefore advisable to reach decisions on a section of it with respect both to content and form before drafting the whole.

Several writers and jurists have proposed codes of international law and others have written text-books in code form on the science of international law, with numbered articles followed by comment. The codes vary in substance from expressions of existing law as the author understands it to expressions of what ought to be the law in the author's opinion; and in form from the succinct to the diffuse or, it may be fairer to say, detailed. A comparison of these discloses that many different views are held on questions of substance; that what one includes another excludes, and that even when the substance of a rule is unanimously accepted the statements vary in the phrasing. Scrutiny and comparison of these articles are highly instructive, and we have taken a few, almost at random, to see what practical suggestions they offer a codifier. It was of course far from the minds of most of these writers that their proposals should be transplanted *expressis verbis* into an official code, and it should also be kept in mind that some of these translations may only approximate the meaning of the original.

Duplessix, in his draft code of public international law, has proposed the following articles under the caption "Conclusion and form of treaties":¹

369. Negotiation of treaties may be conducted by the competent territorial authority or by delegates to which it transmits all or part of its powers.

370. This negotiation may be preceded by conferences resulting in simple preparatory study without involving the parties in any engagement.

371. Treaties should contain: indication of the contracting states; declaration of the object of the treaty; enumeration of the names and positions of the negotiators and statement of their powers; the clauses of the convention; the reservations that may be advisable; especially as regards ratification; place and date of signature; the number of copies drawn up; signature and seal of the negotiators. At least one copy of the treaty should be delivered to each of the contracting states.

372. Failure to adopt these prescriptions of form is not of itself a cause of absolute nullity.

These articles deal chiefly with procedure or diplomatic practice; and the propriety of including such matter in a code is at least doubtful. The negotiation of treaties between states is analogous to negotiation of contracts between individuals; and as in the latter case there may be good business methods and bad business methods of arriving at agreements and of expressing them in written form, so in treaties between states there are excellent methods and poor methods, and in neither case is it advisable to appear to prescribe a legal rule, unless the rule is explicitly laid down for obedience and is the source of legal obligation.

Duplessix says also:

365. Every state may also contract conventional obligations either with another state or with the nationals of that state.

Each of the two parts of this article requires comment. The first part declares that every state can (*peut*) contract conventional obligations with another state. It declares that the state *has capacity* to make an agreement with another state giving rise to legal obligations. Now, it is a matter of *fact* that states do make agreements with other states. When such agreements have been made the law steps in to raise legal obligations therefrom. Should it not be put so that the fact would be assumed? Besides, the verb "can" (*peut*) may be understood to mean "it is permitted," or "it is not forbidden," as well as "it is legally within the capacity." A word that is susceptible of different shades of meaning, especially where inferences concerning legal rights, obligations, privileges, immunities, and powers, must be drawn, should not be employed in a code.

The second part of the article, saying that every state can contract conventional obligations with the nationals of another state, raises a preliminary

¹ E. Duplessix, *La loi des Nations . . . Projet de code de droit international public. Ouvrage couronné par le Bureau international de la Paix.* Paris, 1906.

question of principle. In an agreement between a state and a national of another state, can the resulting proximate obligation, or obligations, of either party belong in the field of international law? Is not every state obligation in the field of international law an obligation towards another state as such? If a state enters into an agreement with a national of another state, its obligation towards that individual falls within the domain of municipal law. Its obligations to that individual are determined by the contract and its national law; its obligations in international law towards the foreign state to which that individual belongs are determined by the general rules of international law alone or in conjunction with particular treaties governing the case. In this article it therefore appears that the condensation of expression by use of the word "obligations" to mean, first, international obligations, and, secondly, municipal obligations, is objectionable as begetting confusion of thought.

We do not blink a current theory frequently and learnedly maintained that an individual is clothed with international obligations and rights both primarily and by contract. This is the preliminary question of principle referred to, and it must be settled to afford a firm basis for code articles embodying rules.

Dr. Pessôa, in Article 199 of his draft code, says:² "A treaty shall not be valid which . . . threatens the fundamental principles of justice or [the fundamental principles] of international law."

Supplying the ellipsis by the bracketed words, we observe that as the fundamental principles of justice are coupled with the fundamental principles of international law, it follows that the former are, in part at least, not fundamental principles of international law, that some at least of its fundamental principles are outside of international law. Now what are these fundamental principles of justice that are outside of international law? And what are *fundamental* principles of justice which would have an effect which principles of justice that are *not fundamental* would not have? Here we have a code clause so difficult to interpret that it would seem better to omit it as stated, and leave consequences to political action.

In his Article 202 Dr. Pessôa says: "Treaties shall be promulgated with the exception of those parts stipulated to remain secret."

The question whether international law shall make it obligatory upon states to make public all their treaties is one that is much discussed nowadays. Publication may take place in different ways. Treaties may be communicated to states not parties; or they may be officially promulgated as a domestic act and foreign nations be presumed to have notice of such promulgation just as they are presumed to have knowledge of the treaty-making power of other states. It is worthy of consideration whether, if a

² *Projecto de codigo de direito internacional publico* by Epitacio Pessôa, delegate of Brazil on the Commission of Jurists charged with the codification of international law. Rio de Janeiro, Imprensa Nacional, 1911.

party discharges all its obligations arising out of a given treaty, the other party is at all concerned with the former's domestic promulgation or with its communication to other states, a communication that either has power to make. The article, as it stands, seems in effect to favor secret treaty provisions, for promulgation of a provision that it was agreed to keep secret is here implied to be a violation of a legal obligation. If nothing is said about secrecy in the code, a mere promise to keep the provision secret, though it might give rise to a moral obligation, would not give rise to a legal one.

Professor Fiore proposes the following:³

763. Anything implying a violation of the constitutional law of either contracting party cannot constitute a lawful subject-matter of a treaty.

In his comment Professor Fiore says that the sovereign of a state can not be regarded as competent to violate the constitution, and since the other party ought not to be ignorant of the constitutional law of the state with which it is negotiating, it is impossible to consider as the lawful subject-matter of a treaty anything directly opposed to the respective constitutional laws of the contracting states. Professor Fiore in this reasoning identifies a state with the sovereign of a state. Cannot a state, for example, in a treaty of peace, duly ratified, assume obligations which involve violation of its constitutional law? The idea of this article is expressed variously in codes and by text-writers. Perhaps the fundamental question is one of competency of a state. Let us put it this way: "A state is not competent to violate its own constitutional law." Here the word competent must mean competent in international law. But it is an accepted view that if states violate their own constitutions (for instance, by ceding territory) such treaty provisions are valid in international law. Their effect in internal law is not matter for an international code. Of course, an exceptional status might be created in the code for treaties of peace. But we would be met with the objection that there are compulsive measures short of war ranging from reprisals like occupation through lower degrees of compulsion to a mere gesture begetting fear, which, like unsuccessful war, produce the necessity of sacrifice.

The code published by David Dudley Field in 1876 has the following article, page 82:⁴

202. An obligation created by treaty is extinguished, either,
1. By its full performance; or,
 2. By renunciation of the party entitled to performance; or
 3. By the subsequent permanent impossibility of performance, without the fault of the party bound; or,
 4. By fulfillment of the conditions, or the expiration of the time, expressed in the treaty for its extinguishment; or,

³ *International Law Codified and its Legal Sanction, or the Legal Organization of the Society of States*, by Pasquale Fiore. Translated by Edwin M. Borchard. New York, 1918.

⁴ *Outlines of an International Code*, by David Dudley Field, 2d ed., New York, 1876.

5. By breach of its conditions by the nation entitled to performance; or
6. By rescission of the treaty, through common consent.

Is No. 1 serviceable? It seems to be an expression of an identity. An obligation to do something is extinguished by doing it.

No. 2 speaks of renunciation but not of acceptance of the renunciation. In the absence of acceptance, can the renunciation be revoked? Perhaps this No. 2, with some phrase respecting acceptance, should be included in the code since it may happen that an individual national of the renouncing party will in a judicial proceeding invoke the obligation as an existing one.

No. 3 appears to be one case of *rebus sic stantibus*.

No. 4 is another identity as the obligation which arises out of the treaty stipulation is itself limited in duration.

No. 5 speaks of breach of the conditions [of an obligation which we denote by A]. By "breach" must be meant a wrongful act by the obligor state violative of one or more of its own obligations, and Mr. Field means that the discharge of these obligations may be "conditions" of the continuance of the other party's obligation, denoted by A. Now, sometimes a violation of a treaty obligation by one party does not give the other party even an option to treat its own obligation as extinguished. The construction of the treaty is involved, and, the intent of the parties that a particular event shall be a "condition of an obligation" being ascertained, the duration of said obligation is ascertained. In law a condition of an obligation may be an event which terminates this obligation or an event which brings it into existence. Mr. Field here speaks only of an existing obligation. Again, the event may be unconnected with some obligation of the other party, or it may be the non-performance by that party of an obligation. It is the latter that is contemplated in this article. Non-performance of an obligation may result from non-performance of an act or performance of the act, according as the treaty clause reads. "Condition" is a term much used in our common law and also in foreign systems (the French have conditions *casuelles*, *potestatives*, *mixtes*, *suspensives*, *résolutoires*), and its use in this article suggests the question whether the subject of conditions should receive special treatment in our section. Mr. Field does not use the word elsewhere, and its lay meaning is apparently sufficient here, but "breach of a condition" is rather too compact for clearness.

No. 6 is a repetition of No. 2, applied to each and every obligation of the treaty and requiring acceptance of renunciation.

Professor von Liszt in his valuable work on international law⁵ has presented the subject in the form of leading articles attended by commentary. He does not use the word code, the title of his work being, in translation, "International Law Systematically Set Forth," and some of his leading

⁵ Franz von Liszt, *Das Völkerrecht systematisch dargestellt*. 9th ed., Berlin, 1913.

articles are remarks on practice. One of his articles will be quoted here because it raises an essential question of principle. He says, p. 161:

• The capacity to conclude treaties proceeds from sovereignty. However, it is customary the greater part of the time to accord to part-sovereign states the right to conclude treaties on condition that they shall not have political character (particularly commercial treaties).

In a compound state the capacity which belongs in respect of treaties to each member state is determined by the constitution in force.

Here are problems suggested by the terms "part-sovereign states" and "compound states." The code must deal with them somewhere in a definite way. Possibly that may be done sufficiently in the section on states, but the questions that arise with respect to treaties may be suggested here. Professor Liszt instances Egypt, Bulgaria, Korea, Tunis. The change in status of some countries in recent years has not lessened the importance of the question. So far as the *conclusion* of treaties by non-sovereign countries is concerned, there is no difficulty. The sovereign state places its treaty-making power where it likes. Whether Australia is competent to conclude a treaty with a sovereign state respecting Australian tariffs, is a question for the sovereign state known as the British Empire to decide. But the treaty having been made, upon whom do the international obligations rest? Would the British Empire have any international obligations or any international rights in the matter? Would Australia have any? Would not the international obligations and rights of the other contracting state have regard only to Great Britain, Australia only appearing in the subject-matter? If this is the correct view, theoretical difficulties disappear. If an international legal obligation can only exist as flowing from one fully sovereign state to another full sovereign state, Australia's obligations would not be such. A not fully sovereign state, like an individual, is privileged to enter into a contract with a sovereign state, meaning of course privileged internationally. This contract is not a treaty unless treaty-making power on the subject is lodged with the not fully sovereign state.

Dr. Bluntschli⁶ allows sixty articles to his section on "Treaties," and has a few more elsewhere concerning the effect of war on treaties. We select two articles for comment.

449. In the interpretation and application of treaties of alliance, both parties must proceed in true loyalty, good faith, and sincere friendship.

Dr. Bluntschli in his comment on this article says that these moral considerations should never be excluded in interpreting any treaty whatever. If the article is retained, should it not be made general? Should it not be omitted altogether, and thus left only in the domain of the moral law? And

⁶ Johann Kaspar Bluntschli, *Das moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt* (3d ed., 1878), secs. 402-461, 538, 718, 726. A French translation by C. Lardy was published in Paris in 1881.

thirdly, since this article is one of four on alliance in particular (Articles 446-449), is there place for special treatment of treaties of alliance? Should, or should not, a treaty promise to make war give rise to a legal obligation or only to a moral one? If the latter, should not there be an article excepting such a promise from the general rule that a legal obligation springs from a treaty promise? A rule that a treaty stipulation in contravention of international law is void does not cover the case, since the making of war, even international assault, is not illegal.

460. The obligated state can be held to fulfill an obligation that is burdensome and disadvantageous to it, but cannot be expected to sacrifice its existence or necessary development to treaty-faith.

The important phrase in this article is "necessary development". Mr. Lardy's French translation of the article is:

On peut exiger d'un Etat qu'il exécute les engagements onéreux contractés par lui, mais on ne saurait lui demander de sacrifier à l'exécution du traité son développement et son existence.

The original German is:

Der verpflichtete Stat kann angehalten werden, auch eine ihm lästige und nachtheilige Verbindlichkeit zu erfüllen, aber niemals darf ihm zugemuthet werden, dass er seine Existenz oder seine nothwendige Entwicklung der Vertragstreue zum Opfer bringe.

"Necessary development,"—here is indeed room for wide differences of opinion between states. Can it be narrowed?

With this little baggage we may again approach our task of drafting articles on treaties. These articles will be accompanied by comment, and among them will appear some that are stated only for purposes of discussion. It seems premature to formulate a group of rules of interpretation, for the general question touching them should first be resolved, inasmuch as the exclusion that would result from a negative answer would make unnecessary the labor of framing them properly.

Rules for interpretation of treaties have for their sole object ascertainment of the intention of the parties. These rules, at least the majority of them, are perhaps not rules of international law at all, but only aids in the ascertainment of the intention of the parties, without having any obligatory force. Many of these so-called rules are mere argument, belonging to the realm of reason rather than that of international law. In determining the intention of the parties the conclusion reached by a court would be based upon reasons as reasons, and not on reasons as rules of law.

Municipal law comes in on grounds of public utility to lay down rules that shall prevail irrespective of the real intention of the parties. Such is the rule of "best evidence" in the common law. In international law is there any such restraint? In international law the ascertainment of mutual intention is the final cause of interpretation and some so-called rules of interpretation

are merely axiomatic statements that appeal to the mind as proper aids in arriving at a determination of the mutual intent. The judicial determination will rest on a conviction reached by reasoning freely from all facts.

Let us again take for a specific instance the rule that "ordinary words should be taken in their ordinary sense, technical words in a technical sense." Is there anything mandatory in this rule? Is not the meaning rather that it is probable, in the absence of evidence of the contrary, that the parties intended the specific ordinary words to be taken in their ordinary sense, and the technical words in their technical sense? Would not the mind of an international judge treat this rule as a reasonable argument on probabilities, and weigh those probabilities with all other probabilities which he derives from other arguments, or so-called rules, *pro* and *con*? If the matter is purely one of reasoning, is it not outside of the law, and, in this instance, not even a part of its foundation? Is it not merely finding a fact? If, however, the "rule" is mandatory, so that a court must apply it, it is a part of the law.

Account must be taken however of the basic objection that might be advanced, that in a treaty as in a private contract, there may be no actual mutual intent; that although there is common consent that there shall be a contract, the meanings attached to its terms by the parties are not identical, that the law, on the ground of public utility, presumes them identical, and in order to give effect to this presumption establishes legal rules of interpretation which are exclusive of evidence that will establish a failure of the contracting minds to meet. Which theory shall we adopt? It may be that the latter theory can have bearing only upon the admission of some of the proposed rules of interpretation.

The following nineteen articles have been drafted in an endeavor to bear in mind the cautions suggested in the foregoing lines. As regards substance, some are included, as has been intimated, only in order to bring to the front questions that seem fundamental and necessary to be answered.

1. A treaty is an agreement in writing between states.
2. The promises contained in a treaty are binding on the parties.
3. The obligations created by treaty arise at the moment the project of treaty becomes a treaty by exchange of mutual consent thereto by competent organs of the parties.
4. The competence of state organs to give consent is dependent upon national law.
5. States are presumed to know the national law of other states in this regard.
6. The competent state organs communicate their consent directly or through duly empowered individuals.
7. No obligation arises from consent obtained from state agents by means of duress exerted upon them personally.
8. Treaty obligations produce rights only in the co-contracting states.
9. A treaty stipulation in contravention of international law is void.

10. The obligations arising out of treaties are not modified by changes in the internal organization of states.
11. Treaty obligations which have not been assumed expressly with a view to war are suspended during a state of war between the parties.
12. Treaty obligations which are suspended during a state of war between the parties revive at its conclusion, except those obligations which are incompatible with a suspension.
13. A treaty obligation terminates on disappearance of the obligee or obligor state, subject to the international rules of succession.
14. A treaty obligation is terminated by renunciation on the part of the obligee state.
15. When an essential treaty obligation has been violated by one state, the other parties to the treaty have the power to cancel the whole treaty.
16. If the power to cancel a treaty on the ground of its violation is not exercised within a reasonable time after the violation has become known, the power ceases to exist.
17. The intention of the parties is the measure of a treaty obligation.
18. A treaty obligation is suspended when it becomes impossible of fulfillment or comes into conflict with the right of self-preservation of a party.
19. When mutual consent is established by exchange of ratifications the treaty operates as to public rights retrospectively from the date of its signature.

Here might be added such articles on interpretation of treaties as may be deemed proper to be made mandatory. Professor Fiore's articles on interpretation of treaties are perhaps the fullest presentation of the subject in codified form.⁷ He goes extensively into grammatical and logical interpretation. On the other hand, some proposed codes omit all treatment of grammatical and logical interpretation. Compare Bluntschli's code. Which, if any, of these ideas should be expressed in the code? In municipal law we have rules for construction and interpretation of statutes and rules for interpreting contracts, and the analogies afforded may light the way. If the municipal rule forbids consideration of certain relevant evidence or commands what comparative weight shall be accorded it by the judge, it is indeed law. If a so-called rule does neither, it is not law but argument, a rule in the sense of a general proposition, not a universal one. Now what rules for interpretation of treaties exist or should exist as international law?

The foregoing articles are now repeated one by one with comment, which is directed to the central idea or to some peculiarity of phraseology with the aim of bringing into prominence a few of the important queries in our path. It is needless to say that any draft section must undergo searching criticism as to expression as well as to content and sequence.

⁷ Fiore, *International Law Codified*, 1918, secs. 797-821.

1. A treaty is an agreement in writing between states.

A term of precise meaning is needful to serve in international law as the analogue of contract in municipal law, and the word treaty naturally suggests itself. Or shall it be "convention" or "contract"? If the word "contract" be substituted in this article for "treaty", the same substitution should be made in the following articles, using "contractual" where "treaty" is an adjective, and so with "convention" and "conventional." In such case, the word "treaty" would seem to have no place in the section, being merely a form of agreement giving rise to no legal obligations distinct from contractual obligations. In English and American law, the requirement of a writing for certain contracts is a rule of evidence, and many contractual obligations spring from oral language and conduct. Whether this can be the case in international law must be considered, and may have bearing upon the terms selected.

This article is a definition. As the word treaty is used in this section of articles, it has a definite meaning somewhat different from its customary use. Here it includes agreements that are designated by the words convention, protocol, etc. It seems therefore advisable to include a definition of the term.

According to this definition the agreement must be in writing to be a treaty, but no particular form is exacted. Thus a written promise to pay money might come within the definition, the contractual relation being no other than if the promise were couched in usual treaty form. This enlargement of the meaning of the term brings into question whether the entire agreement must be in writing to be a treaty. The municipal law of contracts will furnish analogies. If the answer is based on law, that law should be expressed in the code; if only on reason, equity, etc., further statement would be superfluous, unless in a general way as an article introductory to the entire code to the effect that reason, etc., are the basis of international law. Considerations of general international utility should determine whether international law shall impose the necessity of having a treaty in writing in order to create legal rights and obligations thereunder.

2. The promises contained in a treaty are binding on the parties.

Some article of this import seems necessary. The preceding article is merely definition. This one brings in legal consequences. A treaty gives rise to international legal obligations. These obligations may be numerous or few. The obligations assumed by one state are the consideration for assumption of other obligations by the other party. The whole subject of treaty obligations, it seems, can be fairly dealt with in the light of municipal systems of law on private contracts. In making use of this analogy care must be used to bear in mind the difference between an individual and a state. Contracts between corporations in municipal law afford some useful

analogies, because in every case, as with states, they are represented by individuals.

Is a treaty void if without consideration? Is the case analogous to the *nudum pactum* of private law? If so, the agreement is not a treaty, and its obligations reside in the domain of international morality or etiquette. But a state may desire to assume a legal obligation by treaty without consideration in the shape of an obligation assumed by a co-contracting party. And first of all, must we not carefully compare our national law with that of civil law countries? Does our "consideration" exactly match their "causa"? Let us be careful not to attempt to carry into the draft code principles of national law on a mistaken assumption that they are already universal. To propose them, with the knowledge that they are not general but in the belief that they merit adoption, is proper; and where there is a lacuna in international law that should be filled, proposals are not only proper but exigent.

3. *The obligations created by treaty arise at the moment the project of treaty becomes a treaty by exchange of mutual consent thereto by competent organs of the parties.*

Much matter regarding negotiation of treaties to be found in textbooks is here excluded on the theory that it is immaterial how informal a negotiation may be, provided the states concerned authoritatively consent.

The effect of treaties upon private rights is a matter of treaty construction and therefore should not appear at this point.

4. *The competence of state organs to give consent is dependent solely upon national law.*

5. *States are presumed to know the national law of other states in this regard.*

Perhaps Article 5 should be part of No. 4, or be omitted. It may be deduced directly from Article 4, which is absolute. Knowledge or ignorance of pertinent national law seems therefore immaterial, and a legal presumption on the point accordingly useless. This is tentatively inserted by way of illustration of many deductions and inferences. If the deduction or inference can be used as basis for further development to which the main proposition does not clearly point, utility justifies its inclusion. In the case of this article I see no such condition, but others may.

6. *The competent state organs communicate their consent directly or through duly empowered individuals.*

It may be queried whether this article is necessary in this place. It introduces the subject of state agents. On the whole, it is thought best to have it here.

7. *No obligation arises from consent obtained from state agents by means of duress exerted upon them personally.*

The case could seldom arise with present elaborate methods of making treaties, but it is conceivable. A state, having ratified a treaty, would not

empower an agent to communicate consent if it were not willing this should be done, but some unforeseen event might happen after such authorization that would influence its agent to stay his action. Moreover, in some agreements falling within our definition of treaty consent is given by a duly empowered negotiator without precautionary ratification by the state.

The term "duress" has a technical meaning in common law and two questions are raised by its use here. First, is that meaning the one we wish in this code, or is the meaning of some other word, say constraint, better for our purpose? Secondly, should not a common law technical term be avoided unless it has exact equivalents in other languages, at least in French?

This article regards only the motive to avoid pain. A motive to gain pleasure may induce the same action. Bribery is as improper as threats, but does not have the same legal effect as duress.

8. *Treaty obligations produce rights only in the co-contracting states.*

Many treaties have only two parties, some have several, and some are universal, or at least in contemplation of law there may be a treaty to which all the states are parties. In a treaty to which there are several parties, has each party a legal interest in every obligation arising from the treaty? For instance, states A, B, and C, agree not to use gas against one another in time of war, and war breaks out between A and B. A uses gas against B. Was A under treaty obligation to C not to use gas against B? Was A under treaty obligation to D, a non-contracting Power not to use gas against B? The code should furnish a rule or rules governing these questions. The article here drafted governs the second; does it deal with the first? When all states are parties to the treaty, the treaty obligations which are merely contractual when there are only two parties become a general or social contract, or, in other words, a source of international law. Now, assuming the existence of a universal treaty not to use gas in time of war, if A uses gas against B, what is C's legal interest with regard to the act? If C has any right that has been thus violated, is it a contractual one, or does it rest immediately upon the international law that happens in this case to have been made by treaty? Suppose the use of gas to have been forbidden by international law in the absence of treaty, should not the position of a third state be the same with regard to such act? Is there any international law such that A's illegal act resulting in damage to B also violates A's obligations to the other states for the sole reason that it is contrary to international law? Reverting to the above illustration of a tripartite treaty, would C's position with regard to the supposed act be the same as if the treaty were a universal one? If A's act towards B is thought not to be an injury of a right of C, suppose that damage results therefrom to C. Would, or would not, A be legally responsible for it? Is this *damnum absque injuria*? Or, if loss does not result, is it *injuria absque damno*?

9. *A treaty stipulation in contravention of international law is void.*

Should the idea in this article be carried to the section on states, as dealing rather with the capacity of a state to assume an obligation in contravention of international law? There it would have a more general statement of which the present article is a corollary.

10. *The obligations arising out of treaties are not modified by changes in the internal organization of states.*

This article seems to raise no query. The principle is not now controverted.

11. *Treaty obligations which have not been assumed expressly with a view to war are suspended during a state of war between the parties.*

The word "suspended" here is not meant to imply that the obligations will necessarily revive; perhaps some word like "inoperative" or "inactive" would be better. However, we often speak of "indefinite suspension."

12. *Treaty obligations which are suspended during a state of war between the parties revive at its conclusion, except those obligations which are incompatible with a suspension.*

Much has been written about termination of treaties by war, but it is more clarifying to deal with treaty obligations. A treaty often gives rise to many obligations, some of which may be executed before war occurs, and others not yet executed. When obligations are executed they no longer exist, and can not be affected by a later war. If all the obligations are discharged the treaty is not a treaty at all, except reminiscently. The term may then denote other rights, as of property, which have been acquired by treaty; but the parties are not longer bound by a contractual tie. This is a difficult article to word correctly. For instance, obligations on one party which have been executed may be the consideration for assumption by the other party of obligations which have not been executed but which are in their nature such as could not be revived after the war. In view of the unsettled state of international law on the subject of termination of treaties by war, it is suggested that, so far as the doubtful field is concerned, a definite rule be laid down in the code, for the reason that in the treaty of peace the parties can fully regulate their future relations. Perhaps the simplest way would be to provide that all treaties which are suspended are annulled subject to contrary provisions in the treaty of peace.

13. *A treaty obligation terminates on disappearance of the obligee or obligor state, subject to the international rules of succession.*

Development of the subject of succession to treaty obligations would appear under "Succession" more appropriately than here.

14. *A treaty obligation is terminated by renunciation on the part of the obligee state.*

The query whether acceptance of renunciation must take place to put an end to the obligation, and in what form, has been raised above.

15. *When an essential treaty obligation has been violated by one state, the other parties to the treaty have the power to cancel the whole treaty.*

The word "essential" is here the crux. It is agreed that some violations will not give a power to cancel the whole treaty. The question seems to be one of failure of consideration. We have not, however, above made consideration an essential element of a treaty. Should this be done?

16. *If the power to cancel a treaty on the ground of its violation is not exercised within a reasonable time after the violation has become known, the power ceases to exist.*

What is a "reasonable time" is a judicial question, the analysis of which is not subject to rules. The word "power" is here used as being the correlative of "liability." The violating state is under the liability of having the treaty cancelled. The violating state is under no obligation in this respect; and as obligation is correlative of "right" it would be inaccurate to say that the other state has a *right* to cancel the treaty. Through looseness of usage the word "right" is often used indiscriminately to cover what in a given case may be a privilege, a power or an immunity.

17. *The intention of the parties is the measure of a treaty obligation.*

This and the remaining articles deal with construction and interpretation. The words construction and interpretation have different meanings in our law, but they tend to the same end, and should not appear in the code in the interest of simplicity. Many articles might be added which may seem to be merely reasonable considerations serviceable in ascertaining the intention of parties rather than to be mandatory, but as the proposals of that nature are very numerous and furnish a good subject for separate treatment, a halt is made here.

18. *A treaty obligation is suspended when it becomes impossible of fulfillment or comes into conflict with the right of self-preservation of a party.*

This is an attempt to express in a definite way the accepted view that treaty obligations may cease simply by reason of a change in circumstances. This idea is expressed by the Latin phrase *rebus sic stantibus*. A slight change of circumstances does not have this effect. A change of circumstances eventuating in impossibility of performance does have this effect. Between these two extremes there is a field in which some cases may be cases of almost impossibility, where the obligor would find it very difficult and burdensome, far beyond expectations at the date of treaty, to carry out

its provisions.. If in such cases a state is to be privileged to disregard its promises, it should be by virtue of some principle or rule that can be invoked. But is it to be so privileged, in *law*, beyond self-preservation? And the right of self-preservation should be carefully defined elsewhere in the code. The words "is suspended" imply that the obligation may revive when the obstacle no longer exists, and if this is the intention the article should be completed by a clause to that effect.

19. *When mutual consent is established by exchange of ratifications the treaty operates as to public rights retrospectively from the date of its signature.*

This is a well-known rule of construction subordinate to the rule of intention of the parties.

PROPOSED RULES FOR THE REGULATION OF AERIAL WARFARE

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When the World War, in which aircraft was employed for the first time on an extensive scale as an instrument of combat, broke out, there were few conventional rules and naturally little or no customary law in existence governing the conduct of hostilities in the air. There was, to be sure, the declaration prohibiting for a period of five years the launching of projectiles and explosives from balloons or by other new methods of a similar nature, signed at The Hague in 1899 and renewed in 1907 for a period extending to the close of the third peace conference. Since the third conference has never been convoked, the declaration may be regarded as still binding on the states which have ratified it, in a war in which both or all the belligerents are contracting parties. But it is significant that only about half the states represented at the second conference signed the declaration, and among those which did not were Germany, France, Russia, Spain and Italy. It thus happens that the principal military states of Europe are not parties to it and its value therefore is slight.¹ In consequence of the so-called "solidarity" clause it was not binding upon any of the belligerents during the World War, not even upon those which had ratified it.

In the second place, there is Article 25 of the Hague Convention of 1907 Concerning the Laws and Customs of War on Land, which declares that "the attack or bombardment *by whatever means*, of towns, villages, dwellings or buildings which are undefended, is prohibited." As is well known, the words in italics were added in 1907 to the corresponding article of the Convention of 1899 upon the proposal of the French delegation for the express purpose of prohibiting the bombardment of "undefended" places by means of aircraft.² Unlike the declaration of 1907, regarding the launching of projectiles, its duration is unlimited, but like it, it has no binding force in a war in which one or more of the belligerents are not parties. For this reason it was not binding upon any of the belligerents during the World War.³ Different, however, from the declaration of 1907, the convention of

¹ Compare Fauchille, "*Le Bombardement Aérien*," *Revue de Droit International Public*, t. XXIV, p. 66; Rolland, "*Les Pratiques de la Guerre Aérienne*," etc., *ibid.*, t. XXIII, p. 505; and Merignhac, "*Le Domaine Aérien*," etc., *ibid.*, t. XXI, p. 228.

² *Actes et Documents de la deuxième Conférence*, t. III, pp. 15-16.

³ Neither Bulgaria, Italy, Montenegro, Serbia, nor Turkey, all of which were belligerents during the World War, had ratified it. Nevertheless, it may be argued and has been argued,

which it is a part has been ratified by most of the important military states of Europe.⁴ But even in a war in which the article is binding on all the belligerents, it would not likely be of any great value, because it is based upon the illogical and impracticable distinction between "defended" and "undefended" places. It forbids the bombardment by aircraft of "undefended" places only and thereby inferentially permits the bombardment of those which are "defended", but it lays down no test for determining when a place belongs to one or the other category.⁵ If the test which is generally accepted for distinguishing between defended and undefended places in land and maritime warfare be applied to aerial bombardment, it will lead to absurd results, because the existence of certain facts which give a city or town the character of a "defended" place in respect to land and naval bombardment cannot be justly said to have any such effect in determining the liability of a place to bombardment by aircraft.

The stipulations of the Convention Relating to International Air Navigation, signed by the plenipotentiaries of the Allied and Associated Powers at Paris on the 13th of October, 1919, and which has now been ratified by the governments of ten of the signatory Powers and adhered to by one non-signatory Power,⁶ are by its express terms binding on the parties only in time of peace.⁷ In any case, its rules relate only to international aerial navigation and not at all to the conduct of war. Certain writers have reproached the authors of the convention for not having occupied themselves

that the article does not embody a new rule of international law but is merely declaratory of an existing customary rule and as such was binding on all the belligerents regardless of the status of the convention of which it is a part. Compare to this effect Fauchille, "*Les attentats Allemands contre les personnes et les biens en Belgique et en France*," *Rev. Gén. de Droit Int. Pub.*, t. XXII, pp. 403-409; Pillet, *ibid.*, t. XXIII, p. 21; Rolland, article cited, p. 509; and Garner, *International Law and the World War*, Vol. 1, pp. 20-21. German jurists themselves admitted during the World War that the stipulations of unratified conventions are binding when they are merely declaratory of the existing customary law. See to this effect Zitelmann in *Modern Germany* (p. 604), being an English translation of a German work entitled *Deutschland und der Welt-Krieg*; Strupp in the *Zeitschrift für Völkerrecht*, Vol. IX, pp. 281 ff.; Von Liszt, in the *Frankfurter Zeitung* for Oct. 29, 1916, and de Visscher, *Belgium's Case*, p. 66. There is room for doubt, however, whether Article 25 was merely declaratory of an existing customary rule of international law.

⁴ See the table of ratifications in Scott, *The Hague Conventions and Declarations of 1899 and 1907*, pp. 236-239.

⁵ Compare Pillet, "*La Guerre Actuelle et le Droit des Gens*," *Rev. Gén. de Droit Int. Pub.* t. XXIII, p. 27.

⁶ The ratifying Powers are: Belgium, Bolivia, France, Great Britain, Greece, Italy, Japan, Portugal, Jugo-Slavia and Siam. The only adhering Power is Persia.

⁷ Article 38 of the convention, as modified by protocols signed in May, 1920: "In case of war, the provisions of the present convention do not affect the freedom of action of the contracting parties either as belligerents or neutrals."

I have analyzed and commented upon the provisions of this convention in two articles entitled "*La Réglementation Internationale de la Guerre Aérienne*," published in Nos. 4-6 of the *Revue de Droit International et de Législation Comparée* (1923-24).

equally with the formulation of rules governing the conduct of aerial warfare.⁸ But apparently the conference either considered the task too large or doubted the expediency at that time of attempting to formulate a code of rules for the conduct of aerial warfare, considering the lack of respect shown by the belligerents during the recent war for the existing conventions.⁹ At the Fourth International Congress of Aerial Legislation, held at Monaco in 1921, the silence of the convention of 1919 on the subject of aerial warfare was the subject of some criticism, and it was decided to place on the program of the next congress, to be held at Prague in October, 1922, the question of the regulation of aerial warfare.¹⁰ At this congress, M. Hobza made a report in which he dwelt upon the urgent necessity of international regulation, indicated what he considered to be the principal ends to be sought by such regulation, and advocated the prohibition of certain methods of aerial warfare. The congress, after hearing his report, charged its *comité directeur* with the task of formulating an *avant-projet* concerning the rules of aerial warfare.¹¹ The subject was again on the program of the congress at its meeting at Rome in October, 1923. It was likewise the subject of discussion at the thirty-first Conference of the International Law Association held at Buenos Aires in 1922.

The Conference on the Limitation of Armaments, held at Washington in 1922, did not occupy itself at all with the question of the regulation of aerial warfare, and the treaty for the limitation of armaments signed by the Powers represented at the conference, contained no limitations either upon the number or the size of airships which the contracting Powers might keep or construct.¹² However, a treaty was signed on the 6th of February, 1922, by Great Britain, France, Italy, Japan and the United States in which it was recited that the use in war of asphyxiating, poisonous or other gases, and all analagous liquids and materials or devices, having been justly condemned by the general opinion of the civilized world and having been pro-

⁸ Compare the remarks of M. Henry-Cotannier in the *Compte rendu du IV^{ème} Congrès de Législation Aérienne* (1921), p. 29. M. Henry-Cotannier proposed that Article 38 be modified to read that in case of war the stipulation of the convention should not affect the freedom of action of the contracting parties when such action was "exercised according to the law of nations" (*ibid.*, p. 41). But the congress did not approve the proposal.

⁹ Compare the remarks of M. de Lapradelle (who took part in the drafting of the convention of 1919), *ibid.*, p. 44.

¹⁰ There was some objection on the ground of expediency to the proposed discussion of the subject, but it was pointed out that conventions for the regulation of land and naval warfare had already been concluded and that there was no reason why aerial warfare should not be similarly regulated. In fact, considering the probable rôle and character of aerial operations during the next war, there was even more reason why it should be regulated by an international convention. See the remarks of M. Hobza, *ibid.*, p. 221.

¹¹ *Ibid.*, pp. 221-225.

¹² See the report of the American Delegation to the President of the United States, in which it was stated that such limitation was considered impracticable. Text of the report in this JOURNAL, Vol. 16, p. 190.

hibited by a convention to which a majority of the civilized Powers were parties, the signatories declared their assent to such prohibition, agreed to be bound thereby as between themselves, and to invite all other civilized nations to adhere thereto, to the end that the prohibition should be universally accepted as a part of international law, binding alike the conscience and practice of nations.¹³ The prohibition upon the employment of these agencies is general in character, and was evidently intended to forbid their use in aerial as well as in land warfare. In view of the prospect that in the wars of the future the airship will play an increasingly important rôle and that poisonous liquids and chemicals will be employed on an extensive scale and with frightful results,¹⁴ this prohibition, if generally accepted, will constitute a very important restriction on the conduct of aerial warfare. The five signatory Powers have ratified the treaty and it is therefore binding upon them in a war between two or more of them. But it would seem from the terms of the treaty that it would not be considered as binding upon one of them in a war with a non-adhering Power. It will be noted that the treaty forbids only the use of gases and analagous liquids, materials and devices; it imposes no prohibition or restriction whatever upon the operations of bombardment so long as a belligerent refrains from making use of these agencies in his bombarding attacks. Subject to this limitation, the whole matter of bombardment by land, sea or air was left untouched by the treaty.

The Washington Conference, however, was not indifferent to the importance, not to say the necessity, of international regulation of the new methods of war to which the invention and perfection of aircraft have given rise, but for obvious reasons it did not feel competent itself to undertake the difficult task of formulating the regulations which it evidently felt to be desirable. In these circumstances the conference adopted the wiser course

¹³ Text of the treaty in SUPPLEMENT to this JOURNAL, Vol. 16, p. 57.

¹⁴ Professor Slosson remarks, apropos of the rôle which chemistry and aeronautics are likely to play in the wars of the future, that a single airship with two men will be able to fly over a warship at great height and besprinkle its decks with a liquid so corrosive that three drops touching the skin of a man will be sufficient to kill him, and so persistent, that a small quantity lodging in its crevices will render the ship uninhabitable for days. *Exhibit under the Auspices of the National Research Council*, prepared by the Chemical Warfare Service, Washington, 1921. It was stated in the *New York Times* of March 3, 1921, that the Chemical Warfare Service of the United States had already discovered a toxic liquid so strong that three drops of it coming in contact with the skin of a man would cause his instant death and that "falling like rain from nozzles attached to airships the liquid would kill everybody in its path." Compare also the following from an article by Professor A. M. Low in the *Nineteenth Century* for Sept. 1923 (p. 356): "Various forms of poison gas more terrible than any at present, will be used and the question of protection will become a highly scientific one. Another weapon—incidentally my own invention—will be jets of water highly charged with electricity. . . . Aeroplanes will be equipped with electric impulse guns firing an enormous number of bullets a second, and no clumsy trailing aerals will be necessary to pick up wireless instructions."

of entrusting the task to a body of legal and technical experts. Accordingly, a resolution, dated February 4, 1922, was adopted providing for the appointment of a commission of jurists composed of not more than two members representing each of the five Powers participating in the conference (Great Britain, France, Italy, Japan and the United States) to consider and report to each of the said Powers upon the two following questions: (1) Do the existing rules of international law adequately cover new methods of attack or defense resulting from the introduction or development, since the Hague Conference of 1907, of new agencies of warfare; and (2) if not so, what changes in the existing rules ought to be adopted in consequence thereof, as a part of the law of nations. The commission thus provided for was authorized to request assistance and advice from experts in international law and in land, naval and aerial warfare. It was agreed that when the report of the commission should be made, the signatory Powers would thereupon confer as to the acceptance thereof and upon the course to be followed to secure consideration of its recommendations by the other civilized Powers. By a subsequent resolution adopted the same day it was agreed that it was not the intention of the parties in providing for the appointment of the commission to report upon the rules of international law respecting new agencies of warfare or that it should review or report upon the rules or declarations relating to submarines or the use of noxious gases and chemicals already adopted by the five Powers represented at the conference.¹⁵ The views of the signatory Powers regarding the employment of these agencies of warfare having already been embodied in a treaty, there was no need for their reconsideration by the commission.

The members of the commission chosen were John Bassett Moore and Albert H. Washburn for the United States; the Rt. Hon. Sir Rennell Rodd and Sir Cecil Hurst for Great Britain; Professors de Lapradelle and Basdevant for France; Senator Vittorio Ricci for Italy, and Baron Matsui and Mr. Matsuda for Japan. The Hague having been chosen as the place of meeting, the Dutch Government was invited to be represented, and Professors Struycken and Van Eysinga appeared as its delegates. In addition to the members of the commission, there was a considerable body of technical experts (more than fifty altogether) especially in military, naval and aerial matters. The commission held thirty plenary sessions in the Peace Palace, beginning on December 11, 1922, and ending on February 19, 1923.

It was clear that the "new methods of attack and defense resulting from the introduction or development since the Hague Conference of 1907, of new agencies of warfare", which the conference had primarily in mind in providing for the appointment of the commission were those resulting from the invention and development of aircraft as instruments of combat. But the invention and perfection of wireless telegraphy, which though not an agency of destruction, had also taken place since 1907, and had played an

¹⁵ Texts of both resolutions in SUPPLEMENT to this JOURNAL, Vol. 16, pp. 74-75.

important rôle, in the conduct of the World War and would probably play a still more important part in the next great war. Like the airship, the employment of radio in time of war was largely unregulated by international conventions.¹⁵ In these circumstances it was finally agreed by the parties to the resolution, that the work of the commission should be confined in the main to the formulation of rules governing the use of radiotelegraphy and aircraft. The rules prepared by the commission were embodied in the form of a "code" consisting of two parts; Part I dealing with the control of radio in time of war (12 articles) and Part II with the conduct of aerial warfare (62 articles). They were accompanied by a general report in which some of the articles are interpreted, and in some cases there is a statement of the reasons why the particular solution finally agreed upon was adopted by the commission. The rules proposed are, of course, merely recommendations to the various governments represented on the commission. As yet, no action appears to have been taken by any of the governments to which they are addressed.

In the preparation of its rules the commission, we are told, worked on the basis of a draft submitted by the American delegation and a similar draft covering, in general, the same ground submitted by the British delegation, and that in the discussion of the various articles, the provisions of each, as well as amendments and proposals submitted by other delegations, were taken into consideration. The earlier articles deal with such matters as the classification of aircraft, the distinctive external marks which public aircraft, both military and non-military, shall bear, the papers which they shall carry, etc. The right of conversion of non-military aircraft into military aircraft is expressly recognized and the question of the place where the conversion may be effected—a question upon which the London Naval Conference of 1909 was unable to reach an agreement—was solved by a provision that the conversion must take place within the jurisdiction of the belligerent state to which the aircraft belongs, and *not on the high seas* (Art. 9). This rule was originally proposed by the Japanese delegation and a similar proposal was later made by the American delegation. The French delegation, however, declined to accept the article.

¹⁵ Article 3 of the Land War Neutrality Convention of 1907 forbids the erection of radio stations by belligerents in neutral territory, and Article 5 obliges neutral Powers not to allow such erection. See also Articles 8 and 9 of the same convention; Article 8 of the Convention of 1907 for the Adaptation of the Geneva Convention to Maritime Warfare, relative to radio installations on hospital ships, and Article 5 of the Convention of 1907 Concerning the Rights and Duties of Neutral Powers in Naval Warfare, which forbids belligerents from erecting wireless telegraph stations in neutral ports and waters for the purpose of communicating with the belligerent forces on land or sea, and Article 25 which obliges neutrals to prevent such acts. See also Articles 45 and 46 of the unratified Declaration of London, relative to the condemnation of neutral vessels for transmitting intelligence to the enemy. The International Radio Telegraph Convention of 1912 deals mainly with radiotelegraphy in time of peace, although it contains several articles bearing upon the question of radio control in time of war. See especially Articles 8, 9 and 17.

The principle of the Declaration of Paris of 1856 abolishing privateering in naval warfare is extended to the conduct of aerial warfare, and it is expressly declared that belligerent rights can only be exercised by military aircraft under the command of persons duly commissioned by or enlisted in the military service of the state, and equipped by crews so enlisted (Arts. 13-14). Members of the crew of a military aircraft must wear a fixed distinctive emblem of such character as to be recognizable at a distance in case they become separated from their aircraft. Like the Hague regulations relative to combatants in land warfare, the proposed rule does not therefore insist upon a uniform. No aircraft other than belligerent military aircraft may engage in hostilities in any form, and the term "hostilities" is declared to include the transmission during flight of military intelligence for the immediate use of a belligerent (Art. 16). This is a logical and necessary prohibition, considering that one of the principal services of aircraft in war is reconnaissance and observation. But the prohibition is limited to the communication of military information *during the course of a flight*. Once the flight is terminated, the aviator is within the jurisdiction of some state and is subject to the laws or regulations of that state concerning the transmission of military intelligence for the benefit of belligerents.

Having in mind, doubtless, the controversy over the arming of merchant vessels for purposes of defense during the World War, the proposed code provides that no private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war (Art. 16). Whatever necessity there may be for allowing merchant vessels to carry arms for their own protection, such a procedure would hardly be effective in case of aircraft, for the reason that such firearms as they might carry would be insufficient against an unlawful attack. The context indicates that the aircraft here referred to are those of belligerent nationality only and does not include neutral aircraft. Nor does the prohibition apply to public aircraft of a non-military character, such as those charged with police and customs services, the arming of which may be necessary to enable them to discharge effectively their duties.

Regarding the nationality of aircraft, the proposed code limits itself to the simple disposition that no aircraft may possess more than one nationality (Art. 10). This is the rule embodied in the International Air Convention of 1919 (Art. 8), but unlike the latter convention, it lays down no rules for determining what that nationality shall be, either when the owner is an individual or an incorporated company, nor any rules regarding the registration of aircraft. Under Articles 6 and 7 of the Air Convention, no airship can be registered by one of the contracting states unless it belongs wholly to the nationals of such state, and when so registered it possesses the nationality of that state and of that state alone. In other words, no foreign-owned airship can be registered in another state and thereby acquire its nationality, so that the nationality of aircraft will be not only that of the

owner but at the same time that of the state of which he is a national, and also of the state in which it is registered. But in case the convention should not be generally ratified, this rule regarding registration and nationality may not be followed by some states; it may happen, therefore, that the nationality of the owner will not be the nationality of the airship, for example, in the case of a French-owned airship registered in Germany, and consequently possessing German nationality. In such a case the exercise of the right of capture in aerial warfare may raise the same difficulties that were raised during the World War in respect to the right of capture of merchant ships which were enemy-owned but which were registered by and possessed the nationality of neutral governments.¹⁷ It would seem, therefore, that it is not sufficient to say, as the rule proposed by the Commission of Jurists does, that no airship may possess more than one nationality. Should it not also pronounce on the question whether that nationality shall be that of the owner or that of the state where it is registered? If the rule of the convention of 1919 which identifies the nationality of the owner with that of the state in which it is registered should become a generally accepted rule of international law, no such difficulties as I have indicated could arise. But is it safe to assume that the convention will be generally ratified? The fact that three years have now elapsed since the signing of it and that only ten of the signatory Powers have notified their ratifications, does not indicate any particular enthusiasm for it.

Whether military aircraft should be permitted to use tracer bullets for the purpose of determining the correctness of their aim, and of incendiary bullets as a means of attack against lighter-than-air craft for the purpose of setting fire to the gas which they carry, was a question upon which there was considerable discussion among the members of the commission and not a little difference of opinion. The use of tracer bullets for the purpose mentioned was a general practice among aviators during the World War and it was defended as a necessary means of effective attack, but in at least one case enemy aviators were arrested and put on trial on the charge that such methods were contrary to the existing rules of the Hague Convention. To remove the doubt regarding the lawfulness of the practice, the commission considered it desirable to adopt a rule on the subject.

The rule as originally proposed simply declared that the use of tracer bullets against aircraft generally was not prohibited. Against this proposal various objections were raised, mainly on the ground of the impracticability of aviators changing, during the course of a flight, the ammunition used by them in aerial machine guns. The commission finally came to the conclusion that the most satisfactory solution of the problem would be a rule declaring specifically that the use of tracer, incendiary or explosive projectiles by, or against, aircraft is not prohibited, and this is the form in which it appears in the proposed code (Art. 18). It is also added that the rule

¹⁷ As to this, see my *International Law and the World War*, Vol. 1, p. 198.

applies equally to states which are parties to the Declaration of St. Petersburg of 1868 and to those which are not.

The question of the right of aviators to drop literature of a propagandist character within the lines of the enemy is dealt with by Article 21, which declares that the use of aircraft for this purpose shall not be regarded as an illegitimate means of warfare and that the members of crews guilty of such acts shall not be deprived of their rights as prisoners of war, if captured. As is well known, aviators of various belligerent countries during the World War resorted to this practice. Quantities of the "holy war" proclaimed against England and France by the Mohammedan Padishah were dropped by German aviators among Indian troops behind the French lines, and many copies of a "lying manifesto" against England and her allies were dropped either by German or Austrian aviators within the Italian lines. In February, 1918, two British aviators who had fallen into the hands of the Germans were sentenced to ten years penal servitude for having dropped "hostile proclamations" (copies of President Wilson's declaration of peace terms) within the German lines. Upon the threat of retaliation by the British Government, the German Government ordered their release. The Austro-Hungarian Government was reported to have given instructions that the death penalty should be inflicted upon captured enemy aviators guilty of distributing enemy proclamations or propagandist literature within the Austro-Hungarian lines.¹⁸ In consequence of these incidents, the Commission of Jurists considered it desirable to formulate a rule on the subject, and the rule proposed recognizes the legitimacy of the acts referred to. It covers not merely the dissemination of tracts, but other means as well, such as the formation of words in the sky by means of trains of smoke, though it probably would not legitimize the dropping of tracts inciting to acts of murder or assassination.

The problem of aerial bombardment was the most important and at the same time the most difficult to solve of all the questions with which the commission had to deal. The practice, at least of certain belligerents, during the World War of making air raids upon cities, towns and villages situated far behind the lines of the operations on land and even in the interior of enemy countries, no part of which had ever been invaded by the land forces, and which were not even defended in the sense of land warfare, and of launching, indiscriminately, bombs and projectiles upon private houses, churches, schools, hospitals, orphanages, and historic monuments, aroused a feeling of horror against which the conscience of mankind everywhere revolted.¹⁹ The vast majority of the victims of these raids were non-

¹⁸ As to these incidents and the sources of information, see my *International Law and the World War*, Vol. 1, p. 495.

¹⁹ As to these raids see my *International Law and the World War*, Vol. I, pp. 459, *et seq.*; Rolland, "*Les Pratiques de la Guerre Aérienne dans le Conflit de 1914 et le Droit des Gens*," *Rev. Gén. de Droit Int. Public*, t. XXIII, pp. 537 *et seq.*; Oppenheim, *International Law*, 3d

combatants and large numbers of them were women and children. Had the amount of military damage done to the enemy been considerable, something might be said in justification of such methods, but in fact in most instances it was trifling and bore little proportion to the damage inflicted upon private property and to the loss of life or injury suffered by the unoffending non-combatant population. In short, the military advantage was only incidental and not sufficient to compensate in any degree for the wrong done to those who were not active participants in the war.²⁰

There is good reason to believe that one of the motives, possibly the leading motive, which animated those who were responsible for these attacks was the psychological effect which it was believed that the terrorization of the civilian inhabitants would cause and which might lead them to demand peace. This was frankly admitted by some newspaper editors in Germany.²¹ But it may be doubted whether attacks of this kind are ever likely to produce any such effects; on the contrary, their very barbarity is rather more likely to intensify the hatred of the people against whom they are directed and drive them to renewed efforts to overcome an adversary who has recourse to such practices. Inevitably also they lead to reprisals and thus tend to cause the war to degenerate into a struggle of reciprocal barbarism.

On the other hand, the very potency of the airship as an instrument of destruction in war is such that there is no reason to believe that states will ever totally renounce the employment of it as an arm of combat, and restrict its use to services of exploration, observation and communication, as certain members of the *Institut de Droit International* proposed in 1911.²² Any such proposal must be regarded as purely chimerical.²³ Likewise, the proposal of M. de Lapradelle and others to recognize the legitimacy of "vertical"

ed., Vol. II, p. 301; Merignhac et Lémonon, *Le Droit des Sens et la Guerre de 1914-1918*, Vol. I, pp. 629 et seq., and Clunet, "*De l'Emploi abusif des Aérostats de Guerre par les Allemands*," in his *Journal de Droit International*, 1916, pp. 385 et seq. Chronological lists of air raids made by the different belligerents during the World War may be found in the *Text Book of Naval Aeronautics* (New York, 1917), and in the *Text Book of Military Aeronautics* (New York, 1918).

²⁰ The London *Times* of June 2, 1916, thus summarized the results of 44 air raids over England: Killed, 409; injured, 1005. Of the victims killed, 114 were women, and 73 were children. In March, 1918, the British Government made public a statement in which it was asserted that the number of English non-combatants who had lost their lives in consequence of German air raids over England down to February 13, 1918, was 1284 and the number of injured 3105. New York *Times*, March 14, 1918.

²¹ See, for example, an editorial so declaring, in the *Essener Volkszeitung* of March 15, 1918, reproduced in Clunet's *Journal de Droit International*, t. 45, p. 622.

²² See the opinions of Von Bar, Albéric Rolin, Holland, Fiore, Labra, Strisower and Westlake in the *Annuaire de l'Institut*, t. XXIV (1911), pp. 134-155 and pp. 303-337. Compare also the opinion of M. Beernaert in the *Revue de Droit International et de Législation Comparée*, t. XLIV (1912), pp. 569 et seq., and Stael-Holstein, *La Réglementation de la Guerre des Airs*, p. 59.

²³ Compare Fauchille, "*Le Bombardement Aérien*," *Rev. Gén de Droit Int. Pub.*, t. XXIV, p. 67, and Spaight, *Air Craft in War*, p. 3.

aerial warfare, that is, the right to launch bombs and projectiles from aircraft upon the enemy below, but to forbid "horizontal" attacks, that is, the firing by one aviator upon another in the air, must be ruled out as impracticable.²⁴ The legitimacy of aircraft not only for purposes of observation and reconnaissance but as an instrumentality for destruction must be recognized, and there is no place for making a distinction between so-called vertical and horizontal warfare. At the same time, the civilized world demands that its use in war shall be restricted, so far as is practicable, to attacks against enemy combatants, including, it must be admitted, those of the civil population who are engaged in the production of materials of war or in other services which relate directly to the prosecution of the war, and to the destruction of such works and establishments as properly fall within the category of military objectives. The problem, therefore, is not the prohibition of aerial warfare, but its regulation in such a manner as to spare, so far as is practicable, unoffending non-combatants, private property and public institutions from indiscriminate destruction, and to insure that the wars of the future will not degenerate into struggles of reciprocal reprisals and barbarism, in which no distinction will be made between combatants and non-combatants or between public property and private property.

On account of the very nature of aerial warfare, the solution bristles with difficulties, and no regulations which can be agreed upon, even if they are scrupulously observed by belligerents, are likely to be entirely effective in safeguarding the rights of non-combatants and private property in all cases. The civilized world is in accord that a belligerent ought not to direct his attacks against the civil population who take no part directly or indirectly in the operations of the war, or against private property or institutions of a charitable, educational or religious character, and all the existing conventional and customary rules of land warfare are based on this principle. There is no reason for admitting a different principle for aerial warfare, and however much the old distinction between the situation of the military and civil populations in respect to blockade, contraband, commercial intercourse, etc., may have been undermined during the World War, there is no reason to assume that the world is ready to go to the length of totally abandoning it and of recognizing the legitimacy of war directed against both classes of the population equally. It may readily be admitted, as some militarists now prophesy will be the case, that in the wars of the future the category of non-combatants will be very greatly reduced, that women who work in munitions factories and in other ways contribute toward the winning of the war, cannot expect to enjoy the immunities of non-combatants, and that even those who take no part at all in the war, directly or indirectly,

²⁴ *Annuaire de l'Institut*, t. XXIV (1911), p. 336. As to the impracticability and doubtful value of this proposed distinction, see the remarks of M. Fauchille, article cited, p. 67, and Sperl, in the *Rev. Gén. de Droit Int. Pub.*, t. XVIII, p. 480.

will be obliged to "accept their share of the inhumanity."²⁵ But it does not follow from these circumstances that the ancient distinction should be abandoned. The distinction is fundamental and eternal; it is founded upon considerations of humanity; and it would be a singular conception of humanity to abandon it merely because conditions have changed, and especially because more powerful instruments of destruction have been invented, by the use of which the immediate interests of belligerents may be better subserved.

The public opinion of the world demands that whatever rules are adopted, they shall respect so far as is practicable this fundamental distinction. At the same time, they must allow belligerents to employ aircraft for the purpose of attacking the persons and of destroying the things that have always been regarded as legitimate objects of attack in war. The problem cannot be solved satisfactorily, in our opinion, by attempting to assimilate completely aerial warfare either to land warfare or naval warfare, or both, or by treating aerial warfare as though it were merely an accessory of one or the other and by applying to its conduct either the laws of land warfare or naval warfare, as some jurists have proposed to do.²⁶ Aerial warfare differs essentially from both land and naval warfare and it is carried on in large measure independently of both. It must therefore be regulated by a different set of rules,²⁷ although naturally many of the rules of land warfare and naval warfare are applicable to its conduct or may be adapted so as to be made applicable. The Commission of Jurists proceeded according to this view. Instead of endeavoring to adapt and apply the rules of land and naval warfare to the conduct of aerial warfare, it undertook to formulate a distinct code, although it appropriated literally or in adapted form various rules of the Hague and Geneva Conventions which seemed suitable of application to the conduct of aerial warfare. The commission also very properly recognized at the outset, that whatever rules were adopted they ought to begin with a definite and precise statement of certain objects for which bombardments by air should not be recognized as legitimate, and no difficulty was experienced in reaching an agreement as to what these purposes were. In the first place, it was agreed that aerial bombardment for the purpose of terrorizing the civil population, of destroying or damaging private property not of military character, or of injuring non-combatants,

²⁵ Compare to this effect the remarks of Rear Admiral S. S. Hall, of the British Navy, in an address before the Grotius Society, *Transactions*, Vol. V, p. 83, and of Professor A. M. Low, in the *Nineteenth Century*, Sept. 1923, p. 356.

²⁶ For example, Merignhac, *Traité de Droit International*, t. I, pp. 309 *et seq.* See also his article, "Le Domaine Aérien," *Rev. Gén. de Droit Int. Pub.*, t. XXI, pp. 228 *et seq.*; and Roland, "Les Pratiques de la Guerre Aérienne dans le Conflit de 1914," *ibid.*, t. XXIII, p. 511.

²⁷ Compare Spaight, *Air Craft in War*, pp. 99 *et seq.*; Hobza, *Compte rendu de la V^{ème} Congrès du Comité juridique international de l'Aviation*, p. 223; Fauchille, *Droit International Public* (8th ed.) no. 1440; and Pillet, *Annuaire de l'Institut de Droit International*, 1911, p. 306.

should be prohibited.²⁸ This was a formal condemnation of the practices of the World War, and if it becomes a binding rule and is scrupulously observed by belligerents in future wars, aerial warfare will lose much of the character which evoked just protest during the late war and which has aroused widespread apprehension as to its frightfulness in the future. In the second place, the commission agreed that aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money should likewise be prohibited (Art. 23). The rule proposed differs from that of the Naval Bombardment Convention of 1907 which allows the bombardment of undefended places for the refusal of the local authorities to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force in question, although it prohibits bombardments for failure to pay money contributions (Arts. 3 and 4). It does not appear from the report of the commission why a different rule was adopted in the case of aerial bombardment. But it is not easy to see how the processes of levying requisitions and contributions could be carried out by an aviator, and if so, how they could be delivered. To admit the right of bombardment in such cases would probably afford an excuse for the bombing of any place which an aviator might wish to attack. The prohibition, therefore, was a proper one.

Having stated the purposes for which aerial bombardment is *not* recognized as legitimate, the rules proposed by the commission proceed to define what it considers to be legitimate bombardment. Article 24 declares aerial bombardment to be legitimate only when it is directed at a "military objective", that is, an object the destruction or injury of which would constitute a "distinct military advantage" to the belligerent having recourse to it. The sole objectives which may be bombarded are the following: military forces, military works, military establishments or depots, factories constituting important and well-known centers engaged in the manufacture of arms, munitions or distinctively military supplies, and lines of communication or transportation used for military purposes. Furthermore, it is declared that bombardment of these objects is legitimate only when it is directed "exclusively" against them. It will be noted that the *persons* who may be bombarded are "military forces". Apparently this category would not include civilians engaged in the manufacture of munitions, although, as Rolland remarks, they are almost in the same situation as men engaged in the auxiliary services of the army.²⁹ There would seem to be no reason,

²⁸ Article 22. Air bombardment for the purpose of terrorization is condemned by nearly all writers on the laws of war. Compare to this effect the observations of Herbert Manisty, *Transactions of the Grotius Society*, Vol. VII, p. 33: "In my opinion the principal object of a convention or rules, whatever they may be, for the regulation of aerial war, should be to prevent and render illegal bombardment by aircraft of cities or places inhabited by civilians, when this bombardment has as its sole object the terrorization of the civil population, and by this means, the weakening of the morale of the entire community."

²⁹ "Les Pratiques de la Guerre Aérienne," *loc. cit.*, p. 554.

therefore, why they should be entitled to the immunities of non-combatants. However, the munitions factories or other establishments in which they work may be bombarded, so that in fact the immunity covers them only while they are in their homes.³⁰ The list of objectives which may be bombarded is essentially the same as that proposed by M. Fauchille in 1917, except that it does not include edifices utilized by the enemy government or its representatives for civil governmental purposes.³¹ In our opinion the omission of such buildings from the list of military objectives is proper. Those especially which have been constructed in time of peace as the permanent seat of government ought not to be considered as liable to bombardment.³² Agreement upon the list of military objectives was reached only after long discussion by the members of the commission, some of whom desired to make it more comprehensive.

It will be noted that the criterion adopted is whether the object is one the destruction or injury of which would constitute a "distinct military advantage" to the attacking belligerent. It is a reasonably sound one and it has the approval of jurists who have considered the matter.³³ The chief defect, however, of this or any rule which undertakes to restrict aerial bombardment to specified objects when they are situated in urban "agglomerations" and are immediately surrounded by other objects which it is forbidden to bombard, lies in the obvious difficulty which aviators will experience in confining their bomb-dropping "exclusively" to such objects.

How, it may well be asked, can an aviator who flies over a city at great height during the night, when all lights are extinguished, as was the general practice during the World War, identify the persons and things which he is permitted to bombard? How can he distinguish between the military forces and the civil population; between military works, depots and factories engaged in the manufacture of arms and munitions or used for military purposes, and other establishments engaged in the manufacture or production of articles used for civil purposes; or between railway lines used for military purposes and those which are not? To require aviators to single out the one class of persons and things from the other and to confine their attacks "exclusively" to one of them will in many cases be tantamount to an absolute prohibition of all bombardment.

³⁰ Merignhac and Lémonon (*op. cit.*, Vol. I, pp. 676-7) approve the distinction between the rights of munitions workers when they are actively engaged in the manufacture of munitions and when they are in their homes, since in the latter case "they are in no way different from the ordinary population." It may be doubted, however, whether the distinction is sound.

³¹ See his article, "*Le Bombardement Aérien*," *loc. cit.*, p. 70.

³² Compare to this effect Manisty, "Aerial Warfare and the Law of War," *Grotius Society Transactions*, Vol. VII, p. 34.

³³ Compare Hyde, *op. cit.*, Vol. II, p. 322, and Wilson, *Suggested code of aerial warfare*, Naval War College, April 6, 1920, Art. 28.

The most striking feature of the rule proposed by the commission is the character of the test which it adopts for determining the liability of towns and cities to bombardment. It will be noted that the test adopted is not whether they are "defended," but whether they contain establishments and buildings which have the character of military objectives. In fact, the terms "defended" and "undefended" are nowhere mentioned in the proposed code. In this respect the rule regarding aerial bombardment differs from the rule of the Hague Conventions relative to land bombardment (Art. 25), and naval bombardment (Art. 1), which forbid the bombardment of "undefended" places, but which allow the bombardment of those which are "defended". In our opinion, the test proposed by the commission is in principle just and logical. The distinction between "defended" and "undefended" places as a test of liability to bombardment is reasonable enough in land and naval warfare, but when applied to aerial bombardment it is illogical and even absurd. As M. Fauchille has pointed out, the purposes of aerial bombardment are different from those of land and naval bombardment. The object of the latter is to compel the place against which it is directed to surrender so that the bombarding belligerent may take possession of and occupy it. The purpose of aerial bombardment, on the other hand, is simply to destroy the place or certain persons or things in it.³⁴ An aviator cannot capture and occupy a town as land or naval forces can. Moreover, before commencing a land or naval bombardment, the attacking belligerent will ordinarily summon it to surrender, thereby offering the inhabitants an opportunity to escape the consequences of bombardment if they wish. That is to say, they are given the choice of submitting to bombardment or of surrendering and avoiding the consequences. Aviators, on the other hand, rarely offer the inhabitants such an opportunity; in many cases, especially during night raids, it would be impracticable to communicate a summons to surrender; and in any event, it is doubtful whether the refusal of a populous city to surrender upon the demand of a single aviator should be admitted as a justifiable excuse for bombing it. Finally, the "defense" test is neither reasonable nor logical. The existence in or around a city of fortifications, ramparts, or other means of defense against land or naval bombardment cannot be properly considered as giving it the character of a "defended" place in the sense of aerial bombardment. It is believed that no town or city can justly be regarded as "defended" in the sense of aerial bombardment unless it is equipped with artillery of vertical range especially constructed for bringing down attacking aircraft³⁵ or unless it is defended by a squadron of protecting aircraft. If therefore the defense test, which is applied in land and naval warfare, should be adopted as the criterion for determining the liability of cities and towns to bombardment by aircraft, the terms "defended" and "undefended" should be more precisely defined and

³⁴ Fauchille, *Le Bombardement Aérien*, loc. cit., p. 69.

³⁵ Compare Hazletine, *Law of the Air*, p. 469.

certainly they should be interpreted in a different sense to that which is given them in land and naval warfare.

As M. Pillet has pointed out, the terms are unsatisfactory, as was abundantly demonstrated by the experience of the World War.³⁶ To take a specific example, it was impossible to say whether Rheims and Soissons were "defended" or not when they were bombarded by the Germans. The international Red Cross Committee in a letter of November 22, 1920, addressed to the Assembly of the League of Nations demanding that aerial bombardment be prohibited, pointed out that there was no satisfactory criterion for distinguishing between open or undefended towns and those which were not.³⁷ In any case, if the test of defense were adopted, it is not easy to see how an aviator in many cases could determine before beginning a bombardment whether a particular place is defended or not. In view of these circumstances, the solution proposed by the Commission of Jurists which abandons absolutely the criterion of "defense" and substitutes that of the "military objective" is not only more practical but more logical and reasonable.³⁸ In fact, during the World War the British and French Governments professed to have acted in accordance with this rule. Their aviators were instructed to confine their attacks to "points of military importance" and the reports and *communiqués* of air raids which were given out to the public uniformly asserted that the objects of attack were railway stations, barracks, munitions factories, hangars, chemical establishments, etc. Whether the town or city in which they were situated was defended or open, was not mentioned, that fact apparently being regarded as immaterial.³⁹ It should be said, however, that during the later years of the war, both English and French aviators were authorized to make raids upon certain "undefended" towns of Germany as acts of reprisal for repeated and indiscriminate attacks of German aviators against similar places in England and France.⁴⁰ Theoretically the Germans also adopted the "military objective" doctrine, although their practice was far from being consistent with it. Their *communiqués* and explanations as late as the spring of 1918 uniformly declared that their air attacks had hitherto been directed exclusively against fortresses or other objects of military importance and then only when they were situated in the zone of field operations. The raids upon England and the portions of France outside the zone of land operations were justified as legitimate acts of reprisal either for the earlier allied raids upon Karlsruhe, Freiburg and Stuttgart, or for the enforcement of the "illegal and inhuman" Anglo-French blockade.

³⁶ "La Guerre Actuelle et le Droit des Gens," *Rev. Gén. de Droit Int. Pub.*, t. XXIII, p. 429.

³⁷ *Revue Internationale de la Croix Rouge*, 1920, p. 1348.

³⁸ Compare to this effect the opinion of Spaight, "Air Bombardment", *British Year Book of International Law*, 1923-24, p. 22.

³⁹ Compare Spaight, *ibid.*, p. 24.

⁴⁰ As to these reprisal raids, see my *International Law and the World War*, Vol. I, pp. 488 et seq.

Whatever may have been the actual practice of the three belligerents mentioned, it is clear that there was a disposition among them to regard the "military objective" test as the sounder and more defensible; that only objects of military importance ought to be bombarded, and that whether they were situated in a "defended" or "undefended" city or town was immaterial. The rule proposed by the Commission of Jurists embodies, therefore, the view professed by the belligerents during the World War, even if their practice was not in conformity with it.

A second outstanding feature of the rules proposed by the Commission of Jurists is the distinction which it makes between the bombardment of cities, towns, villages, dwellings and buildings situated in the "immediate neighborhood of the operations of the land forces" and those situated outside this region. The bombardment of those situated in the latter zone is prohibited. But suppose certain of the "military objectives" mentioned above are found in the latter zone? Clearly, no belligerent could be asked to renounce his right to bombard such objects, wherever they may be found; and the rule proposed by the commission does not go to such lengths. While it prohibits the bombardment of the town or city in which they are situated, it allows the bombardment of the "military objective" itself, provided it is so situated that it can be bombarded without the indiscriminate bombardment of the civilian population. If it is not so situated, the aviator must abstain from bombardment. This rule is somewhat similar to that which had already been proposed by M. Rolland in 1916, namely, that only such aerial bombardments should be regarded illegitimate and condemnable, as, in view of the circumstances in which they are made, may affect (*atteindre*) principally or exclusively the civil population not engaged in the production of military supplies. That is to say, the bombardment of military objectives situated in an urban agglomeration is legitimate when there exist reasonable chances of hitting them; on the other hand, if there is a probability that the civil population will be the principal victims, the bombardment is not justifiable.⁴¹

In the other zone—that which constitutes the immediate *voisinage* of the theater of land operations—not only the "military objectives" which may be found there, but even the cities, towns or villages in which they are situated, including also dwellings and buildings, may likewise be bombarded, provided there exists a "reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population". The underlying principle of this rule is that whatever injuries the civil population may be subjected to, they should be merely incidental or accessory and the military damage must be compensatory, that is, sufficiently great to justify the sufferings caused those who are not legitimate objects of attack.⁴² It will

⁴¹ Article cited, p. 553.

⁴² Compare the observations of Spaight, *Air Craft in War*, p. 6, and Hyde, *op. cit.*, Vol. II, p. 322.

be noted that in neither zone is bombardment totally forbidden, nor in either is it allowed without restriction. The principal difference is that in one a larger right of bombardment is permitted than is allowed in the other. The distinction is founded on considerations of both reason and logic, not to say humanity. Throughout the World War the Allies protested vigorously against the German air raids upon their towns and cities situated far behind the lines of land operations, and, as stated above, the public opinion of a large part of the civilized world strongly condemned them as cruel and barbarous. The German Government itself protested against the attacks of Allied aviators upon German towns, not merely for the reason that they were "undefended", but because they were situated "far from the theater of operations" or "outside the region of operations". Unfortunately, however, the Germans gave the zone theory an interpretation the effect of which would have protected Karlsruhe and Freiburg against bombardment but not the towns of England and France.⁴³

The distinction which the proposed rules of the commission make between the two zones for purposes of bombardment is founded on the difference of situation between the places and populations of the two regions—a difference which every one feels and can appreciate. In and immediately adjacent to the zone of land operations, war and violence reign; the destruction of towns and villages in this area may generally be justified as a legitimate part of the field operations, and being aware of this, the civil population can be on their guard and may avoid the consequences by withdrawing in advance of the arrival of the enemy. In fact, usually they will already have evacuated this region voluntarily or by order of the local commander of their own forces, so that they will no longer be exposed to the consequences of bombardment. In the other region outside the zone of operations their situation is totally different. A state of actual war can hardly be said to exist there. For an aviator to fly over this region in the darkness of night, launch his bombs indiscriminately upon peaceful towns and villages which are not even technically defended and kill unoffending women and children, is as indefensible as the torpedoing, without warning, of a merchant vessel filled with non-combatants—a procedure which a recent convention stigmatizes as piracy.⁴⁴

The distinction which the rule proposed by the commission makes between the right of aerial bombardment in the two zones, therefore undoubtedly responds to a widespread popular demand.⁴⁵

⁴³ Compare Rolland, article cited, p. 553, and Spaight, article cited, p. 25.

⁴⁴ Treaty of Washington of February 6, 1922, Art. 3.

⁴⁵ Compare, however, Ellis, "Aerial-Land and Aerial-Maritime Warfare", this JOURNAL, Vol. VIII, p. 267, who thinks that the proposal to confine aerial warfare to the sphere above the zone of belligerent operations will probably never be accepted. Military interests, he thinks, will outweigh humanitarian considerations and the entire territory of belligerent countries will be the theater of combat. The rule proposed by the commission, however, is not inconsistent with this view, since it does not forbid but only restricts aerial bombardment in the zone lying outside the field of land operations. All will agree with Oppenheim

But in limiting aviators to the bombardment of certain specified military objectives, in forbidding the bombardment of those situated outside the theater of land operations when it cannot be done without the indiscriminate bombardment of the civilian population, and in allowing the bombardment of places within the latter zone only when there exists a reasonable presumption that the military concentration is sufficiently important to justify bombardment, the rules proposed by the commission undoubtedly leave a large discretionary power to aviators. To a much larger degree than in land and naval warfare they are made the judges of the legitimacy of their attacks. They must determine in each case and with little opportunity for investigation and verification whether a particular object falls within the category of "military objectives", and if so whether it is situated outside the immediate zone of land operations, and if so whether it can be bombarded without "indiscriminate" bombardment of the civil population; and, finally, whether in the case of a city, town or building situated within the zone of land operations there exists the "reasonable presumption" of military importance required by the rule. Manifestly, the most scrupulous aviator will commit errors of judgment under these circumstances if he resorts to bombardment at all. It is altogether probable that in the majority of cases aviators will take large chances, that they will interpret broadly their rights and consider whatever damage may result to the civil population from their bombarding operations as being merely incidental to the accomplishment of a military advantage, and therefore justifiable. For this reason the rules proposed may not prove to be a very effective limitation upon their conduct. The commission was not indifferent to the possibility that the rules which it proposed would be violated and therefore of the necessity of a sanction, and, accordingly, following the analogy of Article 3 of the Hague Convention of 1907 Respecting the Laws and Customs of War on Land, it adopted a rule which makes belligerents liable to the payment of an indemnity for injuries to persons and property resulting from violations of the provisions regarding bombardment.⁴⁶

It is difficult to see how any rule could be devised which would allow (*International Law*, 3d ed., Vol. II, p. 302) that "the limits in which aircraft may be employed to make raids outside the theater of military or naval operations should be established".

⁴⁶ Several of the projects laid before the commission proposed to establish the personal responsibility of aviators who were guilty of violating the rules and to subject them to punishment as war criminals. But no such rule was adopted. The commission, however, admits in its report that the absence of such a rule will not prevent the punishment of aviators who are guilty of infractions against the laws of aerial warfare. The Dutch delegation proposed that belligerents should be held responsible for all acts in violation of the rules, committed by aviators in their service, and that in case of differences regarding responsibility for such violations, they should be submitted to the Permanent Court of International Justice. While declining to embody the proposal in a rule, the commission incorporated the suggestion in its report in order to bring it to the attention of the governments concerned.

bombardment at all and yet be entirely free of the objection mentioned. In the last analysis, the value of the rule proposed by the commission must depend upon the good faith, the respect for conventions and the sentiment of humanity which may animate attacking aviators. It results from the very nature of aerial warfare that under any rule that may be adopted, except that of absolute prohibition, non-combatants will be exposed to large risks and in many cases to the loss of their immunities.⁴⁷ In many cases, no doubt, the fear of reprisals will deter aviators from deliberately violating the rules, for it may be assumed that the belligerent whose own civil population will be equally exposed to unlawful attacks by enemy aircraft will hesitate to have recourse to forbidden methods which may be turned against him with equal effect.⁴⁸

Following the analogy of the Hague Conventions,⁴⁹ the commission added a rule enjoining aviators to spare as far as possible properly marked buildings dedicated to public worship, art, science and charity, and historic monuments and hospitals, provided they are not used at the same time for military purposes (Art. 25). Upon the insistence of the delegates from Italy, a country whose historic and artistic monuments suffered heavily from the effects of aerial bombardment during the World War, a series of special rules were agreed upon with a view to providing greater protection for this class of monuments. In brief, these rules permit states to establish, if they see fit, a zone of protection, not exceeding 500 metres in width, around such monuments, provided it is done in time of peace⁵⁰ and duly notified to the other Powers, and provided they are properly marked by clearly visible signs. An inspection committee of three neutral representatives is provided for the purpose of insuring that the zones so established and the monuments situated therein are not used for military purposes (Art. 26). The system is entirely optional, and if a state prefers to rely wholly upon Article 25 for the protection of such monuments, it is free to do so. It may be remarked that the establishment of such zones will have the effect in certain cases—for example in the case of Venice and Florence, both of which cities are particularly rich in historic and artistic monuments—of including the larger part of the cities in which they are situated, since the zones will frequently overlap one another. On the other hand, the effect will be to neutralize such cities so that they cannot be used for military purposes by the belligerent in whose territory they are situated—a rule which no doubt will be strictly interpreted by the enemy.

⁴⁷ Compare the observations of Rolland, article cited, p. 555; Spaight, *Air Craft in War*, p. 21; Fauchille, article cited, p. 75; Hyde, *op. cit.*, Vol. II, pp. 321 and 323; and Ellis, article cited, p. 267.

⁴⁸ Compare Spaight, *Air Craft in War*, p. 22.

⁴⁹ Convention Respecting the Laws and Customs of War on Land, Art. 27; Convention Respecting Bombardment by Naval Forces, Art. 5.

⁵⁰ There was some objection to the requirement that the zones must be established and notified only in time of peace.

Various other questions of aerial warfare are regulated by the rules proposed by the commission. None of them, however, rank in importance with that of bombardment. Among such matters may be mentioned: espionage, the requisition of neutral aircraft, confiscation of enemy aircraft, treatment of crews and passengers of captured enemy aircraft, internment by neutrals of belligerent aircraft (with their crews and passengers), landing upon neutral territory; visit, search, and capture; destruction of neutral aircraft, adjudication by prize courts, and the reciprocal rights and duties of belligerents and neutrals in their relations with one another. For the solution of most of these questions the Hague rules for the regulation of the same questions in land and naval warfare are quite sufficient and they were taken over bodily or with adaptations and embodied in the proposed code of aerial war.

The most important of these questions perhaps was whether belligerent aircraft should be allowed to circulate over the territory and territorial waters of neutral states with or without the permission of these latter states. The question was discussed by jurists before the World War but they were not entirely in accord on the question. M. Fauchille, in his report to the Institute of International Law in 1911, had maintained that it was not a violation of neutrality for belligerent aircraft to circulate over the territory of neutral states with their permission, provided it was in the nature of simple inoffensive passage. Nevertheless, he recognized the right of neutral governments to forbid such circulation, subject to the condition that both or all belligerents were treated alike.⁵¹ M. Fauchille evidently looked with favor on the right of innocent passage for belligerent aircraft, for the reason that if it were denied it would have the effect of preventing certain states from employing aircraft for the purpose of attacking the enemy. This would be the situation, for example, of France and Austria (a state without sea-board) in case of war between them, if Italy, Switzerland and Germany were neutral. Other writers, however, adopted the view that it was the duty of neutrals to forbid such passage and to use all means at their disposal to prevent it. They assimilated the aerial space to the land upon which it abuts and applied to its use the laws of neutrality which govern the conduct of land warfare.⁵² They pointed out that if the right of passage were

⁵¹ *Annuaire de l'Institut*, t. XXIV, pp. 60 et seq. M. Hooghes proposed code was based on the same principle (Art. I). Other writers who adopted this view were Catellani, *Le Droit Aérien*, p. 188; Meyer, *Die Luftschiffahrt*, pp. 18-20, also his article in the *Revue Juridique Internationale de la Locomotion Aérienne*, 1912, p. 192, and Philit, *La Guerre Aérienne*, pp. 38-48. Ellis (article cited, p. 266), appears to have adopted the same view. He adds that neutral governments ought to announce by proclamation at the outbreak of war their intention, and in case they fail to do so, belligerents would be justified in interpreting their silence as sanctioning the right of passage.

⁵² Among those who maintained this view were: Bellenger, *La Guerre Aérienne*, pp. 104 et seq.; Grovalet, *Le Navigation Aérienne devant le Droit International*, p. 77; Hazletine, *Law of the Air*, p. 139; Lycklama à Nijeholt, *Air Sovereignty*, p. 67; Le Moyne, *Le Droit*

allowed equally to the aircraft of both or all belligerents they would meet in the course of their flights over neutral territory and would almost certainly attack one another. In that case the inhabitants below would be exposed to danger from falling bombs, projectiles and disabled airships.⁵³ Throughout the World War neutral governments in fact acted in accordance with this view. At the very outset, Denmark, Norway, Sweden, Spain, Italy, the Netherlands, and others formally prohibited the passage of belligerent aircraft, military and non-military alike, over their territory, and belligerents were warned that all means at their disposal would be employed to prevent such circulation.⁵⁴ Some of them, like Switzerland, Denmark and the Netherlands, instructed their military authorities to fire upon aircraft offending against their orders, and in some instances they did so with success. Belligerents generally acquiesced in these prohibitions and entered no protests against them.⁵⁵ In fact, both the German and British Governments gave orders to their aviators to respect the neutrality of neutral countries and to refrain from flying over their territories, and when their orders were violated by mistake or otherwise, regrets were expressed, and where damage was done indemnities were paid. This general practice of neutral governments and the acquiescence of belligerents therein, established a customary rule,⁵⁶ and the Commission of Jurists embodied it in the code which it proposed. Article 12 declares that, in time of war, any state, whether belligerent or neutral, may forbid or regulate the entrance movement or sojourn of aircraft within its jurisdiction.⁵⁷ This article, standing alone, would allow neutrals to permit the circulation of belligerent aircraft over their territory, if they wished to accord it, but the right is negatived by Articles 40 and 42. Article 40 forbids belligerent military aircraft from entering the jurisdiction of a neutral state, and Article 42 obliges neutral

Futur de la Guerre Aérienne, p. 226; Merignhac, *Traité de Droit International*, t. I, p. 544; Rolland, article cited, p. 548; Spaight, *Air Craft in War*, p. 66; Kaufmann, *Annuaire de l'Institut*, t. XXIV, p. 139, and the project of the code of maritime neutrality of the American Institute of International Law (Art. 20).

⁵³ Compare Rolland, article cited, p. 579, and Spaight, *op. cit.*, p. 66.

⁵⁴ A résumé of these prohibitions and the protests of neutral governments against the violations thereof may be found in Spaight, *Air Craft in Peace and the Law*, app. III, pp. 203 *et seq.* See also my *International Law and the World War*, Vol. I, pp. 473 *et seq.*

⁵⁵ The German Government, however, protested against the action of the Dutch authorities in firing upon their dirigible, L. 19, which, it alleged, was in the act of landing in consequence of *force majeure*, but the action of the Dutch was defended by Rolland (article cited, p. 581), and Spaight (*op. cit.*, p. 9).

⁵⁶ Compare Rolland, article cited, p. 577.

⁵⁷ The International Air Convention of 1919 (Art. 3) had already affirmed the right of states, for military reasons or in the interest of the public safety, to prohibit the aircraft of other states from flying over certain areas of their territory. This qualified right of prohibition becomes absolute in time of war, in consequence of Article 38, which declares that in case of war the provisions of the said convention do not affect the freedom of action of the contracting parties, either as belligerents or as neutrals.

governments to use the means at their disposal to prevent such entry.⁵⁸ Clearly, therefore, it will not be within the right of a neutral government to accord the privilege of even innocent passage to belligerent military aircraft through the aerial space above its territory, should the proposed rule be accepted as a rule of international law. The prohibition, however, applies only to *military* aircraft, and not to non-military aircraft of belligerent nationality, either public or private.

But suppose a military airship of belligerent nationality is compelled through *force majeure*, lack of gasoline or motor trouble to land in neutral territory? There were instances of the kind during the World War. In that case what treatment shall the aviator, his craft and its crew be entitled to receive from the local authorities? This question had been discussed before the World War and certain jurists had proposed to solve the question by applying the rule of the Hague Convention (No. 13, Arts. 12-14), Relative to the Rights and Duties of Neutral Powers in Maritime War, which permits a belligerent warship which has been driven into a neutral port by stress of weather or by the necessity of making repairs, to remain there until the cause of its entry has ceased.⁵⁹ Others, however, assimilating aviators to troops in land warfare who take refuge from pursuit, in neutral territory, proposed to apply the rules of the Hague Convention (No. V) Respecting Land Warfare and require that their aircraft be sequestered and the crews interned.⁶⁰ This rule was adopted by the Commission of Jurists, Article 42 of whose proposed code, as stated above, makes it the duty of neutral governments to use the means at their disposal to intern any belligerent military aircraft which is within its jurisdiction, after having alighted *for any reason whatever*, together with its crew and the passengers, if any. It will be noted that the rule makes no distinction between aircraft which have voluntarily entered the jurisdiction of a neutral state and landed therein, and those which have been driven to land as a result of bad weather or defective motors or which may have landed through mistake.⁶¹ In either case the aircraft with its *personnel* must be interned. This rule, it may be remarked, is in

⁵⁸ There is no doubt that an airship which passes through the air space above a neutral state would be "entering its jurisdiction." This was settled by Article 1 of the International Air Convention of 1919 which recognizes that every state has "complete and exclusive sovereignty in the air space above its territory and territorial waters". The "jurisdiction" of a state necessarily extends everywhere it has an admitted right of sovereignty.

⁵⁹ Among those who proposed this solution were M. Fauchille, *Annuaire de l'Institut*, t. XXIV, p. 33, and his *Traité*, no. 1476⁷; M. Bellenger, *op. cit.*, p. 110; M. Guibé, *Essai sur la Navigation Aérienne*, p. 290, and M. Philit, *op. cit.*, p. 46.

⁶⁰ This rule was advocated by MM. Merignhac, *Traité*, t. I, p. 584; Catellani, *op. cit.*, p. 188; Grovalet, *op. cit.*, p. 78; Le Moyne, *op. cit.*, p. 227; Spaight, *Air Craft in War*, pp. 69 and 118; Rolland, article cited, p. 585; Ellis, article cited, p. 266, and apparently Hazletine, *op. cit.*, p. 140.

⁶¹ Fauchille recognized the justice of such a distinction. See his *Traité de Droit Int. Pub., Guerre et Neutralité* (1921), p. 767.

accord with the practice of neutral governments during the World War.⁶²

What treatment shall be accorded belligerent aviators who are forced to land in the territorial waters of neutral states and are rescued by the authorities thereof? There were instances of the kind during the World War and the practice of neutral governments regarding their treatment was not uniform. The Government of Denmark applied the rule of the Hague Convention of 1907 (No. X, Art. 15) relative to shipwrecked seamen, interned them and sequestered their aircraft. The Norwegian authorities, on the other hand, released them. Of the two procedures, that of Denmark was undoubtedly more in accord with the generally recognized principles of neutrality. The proposed code of the Commission of Jurists apparently does not lay down a complete rule covering such cases. The rule which it adopts provides that the *personnel* of belligerent military aircraft rescued *outside* neutral territorial waters and brought into the jurisdiction of a neutral state by a neutral military aircraft and there landed, shall be interned,⁶³ but it says nothing of the treatment to be accorded those who are rescued *within* neutral waters. Apparently, however, Article 42, which requires the internment of any belligerent military aircraft found within the jurisdiction of a neutral state, whatever may be the reason for its presence there, was intended to cover such cases. Some important cases of the kind occurred during the World War. Several British sea-planes having been forced to descend in the North Sea, they with their crews were rescued and brought within the jurisdiction of the Netherlands. The Dutch Government released the *équipage* but declined to hand over the *matériel*, on the ground that it would be incompatible with the duties of neutrality laid down by Article 6 of the thirteenth Hague Convention of 1907 which prohibits the supplying directly or indirectly by a neutral to a belligerent of war materials. The action of the Dutch Government in refusing to release the *matériel* rescued from the British planes was the subject of protest by the British Government, which took the position that the prohibition laid down by Article 6 had reference only to the furnishing of supplies *owned* by neutrals and not at all to property *rescued* by them from a belligerent wreck.⁶⁴ In another case where a German airship in distress had been

⁶² As to that practice see Rolland, article cited, pp. 582, 584; Fauchille, *op. cit.*, pp. 768-769; my work cited, Vol. I, pp. 474 *et seq.*, and Spaight, *Air Craft in Peace and the Law*, pp. 209 *et seq.* (where one will find a list of belligerent airships which were interned in Denmark, Norway, Roumania, the Netherlands and Switzerland).

⁶³ Article 43. Apparently if they are rescued and brought in by *non-military* aircraft they are not liable to internment. The Dutch authorities during the World War made this distinction, that is, they interned ship-wrecked aviators who were rescued and brought in by *warships* but released those who were brought in by *merchant* vessels. *Netherlands Orange Book*, Sept. 1916, pp. 144-146, and Fauchille, *op. cit.*, p. 769.

⁶⁴ See the *Journal of the Society of Comparative Legislation and International Law*, No. XL (April 1918), p. 153.

rescued in the open sea and brought with its crew into Dutch jurisdiction, the crew was released but the airship was sequestered and retained until the end of the war. Other instances of the kind occurred.⁶⁵ Under the rule proposed by the Commission of Jurists, it will be the duty of neutral governments in such cases to intern the crews as well as their disabled aircraft.

One final question remains to be considered, namely, whether neutral aircraft shall be allowed to circulate over the territory of belligerent states. Among the jurists who considered the question before the outbreak of the World War, there was a difference of opinion. Some favored the rule of absolute prohibition;⁶⁶ others proposed to leave the whole matter to the decision of the belligerents concerned, that is, they should be left free to permit or forbid such circulation as they might see fit.⁶⁷ In fact, throughout the World War, all the belligerents acted in accordance with this view. At the very outset all of them closed their aerial domains to the entry of and circulation of foreign aircraft, and certain neutral governments (for example, that of Switzerland) expressly forbade their nationals from flying over the territory of belligerent states and even from circulating in their own jurisdiction within certain regions near the frontier of belligerent countries. The right of states to exclude foreign aircraft from circulating over their territory, both in time of peace and in time of war, was affirmed in no uncertain terms by the International Air Convention of 1919,⁶⁸ and this principle is embodied in the proposed code of the Commission of Jurists.⁶⁹ The question may therefore be regarded as definitely settled.

The proposed code elaborated by the commission deals with a variety of other questions of aerial warfare, but the limits of this article do not permit of their consideration. In fact, the commission attempted to find a solution and provide a rule for every question that has so far arisen in aerial warfare, and indeed for a good many that have not actually arisen. In some cases it has proposed rules the necessity and practicability of which, at least in the present state of development of aerial navigation, would seem doubtful.⁷⁰

⁶⁵ As to these incidents, see Fauchille, *op. cit.*, pp. 739-70.

⁶⁶ For example, Fauchille, *Annuaire de l'Institut*, t. XXIV, pp. 92, 94 and 118; also his *Traité*, p. 774; Rolland, Meurer, and Albéric Rolin, *ibid.*, pp. 92, 138 and 148; Le Moyne, *op. cit.*, p. 29; Philit, *op. cit.*, p. 48 and Spaight, *Air Craft in War*, p. 70.

⁶⁷ Among the advocates of this solution were Von Bar, Kaufmann and Renault (*Annuaire de l'Institut*, t. XXIV, pp. 134, 139, 146); Bellenger (*op. cit.*, p. 491); Merignhac, (*op. cit.*, p. 546); and Rolland (article cited, p. 491).

⁶⁸ See especially Articles 3 and 38.

⁶⁹ Article 12. Compare also Article 30.

⁷⁰ For example, it lays down rules governing the visit, search and capture of aircraft, requiring captured aircraft to proceed to a convenient and accessible place for examination, requiring captors to make suitable provision for the safety of persons on board before destroying aircraft, the delivery of contraband found on board neutral aircraft, etc. It is difficult to see how some of these operations can be carried out and, therefore, the necessity of rules governing their procedure.

In its comprehensiveness and detail the proposed code is distinguished from all previous projects which have been formulated by jurists or societies.

In abandoning the illogical distinction between "defended" and "undefended" places as the criterion of the liability to or immunity from aerial bombardment of towns, cities and villages and, by introducing, on the other hand, a distinction between regions which constitute the immediate neighborhood of land operations and those which do not, for the purpose of aerial bombardment, the rules proposed by the commission represent a notable advance upon the existing conventional rules as well as upon those which are found in the projects which have been elaborated by others in the past. Some of the rules proposed by the commission will be criticized for the large discretionary power which they leave to aviators. But, as stated above, it is difficult to see how any rules could be devised which would be entirely free of this objection, if the use of aircraft for purposes of bombardment is permitted at all. The commission made an earnest endeavor to reconcile in a just manner the legitimate rights and interests of belligerents with those of the non-combatant population in particular, and the rights of humanity in general.

No solution yet proposed seems more just or practicable. Considering the rôle which aircraft seems destined to play in the wars of the future and the frightful consequences which its unregulated use will produce, and considering both the paucity and inadequacy of the existing conventional rules, the recommendations of the Commission of Jurists deserve the urgent and serious consideration of the governments to which they are addressed. There is of course no lack of "cynics" who will say that these rules, like all rules for the conduct of war, will be of little value because in the stress of conflict they will be disregarded. But, as Mr. Root remarked, apropos of this argument which he foresaw would be directed against the Washington treaty of February 6, 1922 prohibiting the use of submarines as instruments for the destruction of merchant vessels and the use of gases in warfare, "cynics are always near-sighted, but often and usually the decisive facts lie beyond the range of their vision".⁷¹ Not all, however, will share entirely his optimism when he adds that "when a rule of action, clear and simple, is based upon the fundamental ideas of humanity and right conduct, and the public opinion of the world has reached a decisive judgment upon it, that rule will be enforced by the greatest power known to human history, the power that is the hope of the world", but all will agree that solemnly ratified rules which the parties admit to be binding, whatever may be their defects, are better than no rules at all, and that there is at least a chance that they may serve to deter belligerents from illegal conduct, which in the absence of rules would be permissible.

⁷¹ This JOURNAL, Vol. 16, p. 139.

THE FAR EASTERN REPUBLIC: A PRODUCT OF INTERVENTION

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The circumstances which led to the creation of the Far Eastern Republic as a new Russian state on terms of such perfect amity with the mother country that it was recognized immediately by her and received her warm financial and diplomatic support run back to the revolutions of 1917 in Russia. In Siberia the March Revolution was heartily welcomed and the Zemstvos took over the government. The bulk of the population was content with the abolition of Tzarism but the minority of communists started a Bolshevik propaganda which succeeded after the November revolution, due to the energy of the communists, the armed help of Moscow and the apathy of the peasants. There was, however, a second minority composed of supporters of the old régime and its opposition to the organization of a soviet system in Siberia led to civil war.

Neither side had compunctions about its partisans. The ex-convicts who came into the communist camp filled with the single desire for revenge were no worse than the Cossacks who fought with the counter-revolutionary army. On both sides robbery, torture and murder were the natural methods of the desperadoes who joined them to serve their own purposes, methods which the responsible leaders deplored but could not prevent. The sympathies of the peasants and even of many of the wealthier land-owners gradually were driven to the side of the communists by the atrocities of the reactionaries. The latter, under General Horvath, who had the authority over the Chinese Eastern Railway, and the Atamans or Headmen, Semenov and Kalmykov, operated along the Mongolian and Manchurian borders, conveniently near to Chinese territory which they used as a refuge and base of operations and supplies. General Rosanov maintained his authority at Vladivostok until January 31, 1920, when the liberal Zemstvo was reinstated by the partisan forces supporting the Soviets. On the whole the Bolsheviks were in control and a sort of government was maintained by local soviets which exercised jurisdiction over as wide a region as their military strength permitted. The authority of the Moscow Government was shadowy and there was no other centralizing agency. Among the soviets organized during this period was one entitled: "The Far Eastern Soviet", which asserted its rule over the greater part of the territory later included within the Far Eastern Republic.

The Bolshevik régime in Siberia was interrupted by the Czecho-Slovak

march to the sea. The Czecho-Slovaks were troops, about 40,000 in number, who had deserted to Russia, prior to the latter's defection, in order to have an opportunity of fighting the cause of their own nationalities against the Central Powers. When that opportunity was lost due to the Soviets' withdrawal from the war the Czecho-Slovaks secured permission to retire from Russian territory via the Trans-Siberian Railway and Vladivostok. Their retirement was considered a potential danger by the German Government which induced Trotsky to have them disarmed. Partial disarmament led to fighting in which the superior training and discipline of the Czecho-Slovaks enabled them to gain rapid successes until, with the support of various groups of counter-revolutionaries, they had won control throughout eastern Russia and western Siberia before the end of June, 1918.

In the lull that followed the victorious progress of the Czecho-Slovaks the "Siberian Government" was created at Omsk with a liberal, Vologótsky, as President and Admiral Kolchak as Minister of War and Marine. Its aim was to provide a satisfactory center around which the bulk of the Siberian population, which was neither Bolshevistic nor Tzaristic, might rally. It allowed Bolshevistic influences to get control, however, and thus an opening was presented for a revolutionary *coup d'état*, out of which Admiral Kolchak emerged as "Dictator" of Siberia. At first expected to proclaim a program of monarchical restoration and regarded with suspicion by the liberals, Kolchak gradually won general support by a tactful reticence as to his ultimate policy and an effort to deal straightforwardly with all parties opposed to the Bolsheviks.¹ His relation to the Czecho-Slovaks was, however, rather one of dependence than assistance.

The period of foreign intervention, during which the Far Eastern Republic was established, began as early as December 30, 1917, when a Japanese warship entered the harbor of Vladivostok. Its mission was declared to be to protect Japanese in the city and surrounding country from any danger that might arise out of the troubled situation. The arrangement between the United States and the Kerensky Government, signed in the preceding June, as a result of which two hundred American engineers under Col. John F. Stevens had reached Vladivostok in November, had not yet accomplished anything. Great Britain and the United States informed the Vladivostok Zemstvo Board that they saw nothing irregular about Japan's action. Very shortly thereafter another Japanese cruiser, followed by cruisers of Great Britain, the United States and China, appeared in the harbor. Early in April, 1918, the Japanese and the British landed troops in the city.

The story of the Czecho-Slovak army's anabasis through Siberia is now well-known. Late in June, 1918, a part of these hard-fighting troops which had reached Vladivostok overthrew the local military forces in that city, leaving the civil rule in the hands of Zemstvo officials elected under Kerensky. They then sent a force westward to effect a juncture with the remainder of

¹ A. Bullard, *The Russian Pendulum*, Chaps. XX-XXV.

the army, which was still west of Lake Baikal, and to assist its evacuation of Siberia. Their success in these bold moves led directly to the large-scale intervention inaugurated by the United States and participated in, at her invitation, by Japan, Great Britain, France, Italy and China, which began in August. The then American Minister to China has pointed out that in the summer of 1918 the war seemed likely to be prolonged indefinitely, that Germany appeared to have Russia under her thumb, that the German and Austrian prisoners in Siberia were regarded as a menace and that the Allies still believed that the great majority of the Russian people needed only to be released from the perils of the Bolshevik power to be brought back into the war. Especially it was felt by the Allies and by the United States that the Czecho-Slovaks must be rescued and that the stores of food and munitions in western and eastern Siberia respectively must be saved from the Germans.² The lead taken by the United States was more apparent than real. Previous to America's declaration of August 5, 1918, Semenov and Kalmykov had been furnished with large sums for the hiring of mercenaries and with rifles and machine-guns, the responsibility for which was placed upon the Japanese. The inference is obvious that the intervention in force was announced by the United States as her proposal because her skirts were relatively clean and her statements would be least open to suspicion. The assurances of America that she harbored no designs of conquest and that the Powers associated with her in the intervention were acting upon her principles were calculated both to encourage the Russian people to maintain the struggle against Bolshevism and to quiet the alarm of the Siberians for their territory. All the Powers concerned solemnly promised to withdraw their forces when their common objects had been attained. The statement of the United States was most definite as to what these objects were: "to render such protection and help as is possible to the Czecho-Slovaks against the armed Austrian and German prisoners who were attacking them and to steady any efforts at self-government or self-defense in which the Russians themselves may be willing to accept assistance". As later events have testified, the objects which Japan regarded as justifying intervention were more far-reaching than those defined by the United States. Dr. Reinsch has stated that Japan tried for some months prior to intervention to secure America's recognition of her so-called special interests in Siberia but was unsuccessful.

The American, Japanese and other intervening troops which began to enter Siberia in August gave varying degrees of support to Admiral Kolchak, who had become the head of the counter-revolutionary forces. The Bolshevik armies were for a time consistently defeated. The Czecho-Slovaks, who wished to use the intervention as a means to overwhelm the Bolsheviks and reestablish the Eastern Front, were disappointed by American and Japanese

² P. S. Reinsch, "Japan's Lone Hand", in *Asia*, Vol. XX, Feb. and Mar. 1920, pp. 164-171.

refusal to consider the project. Compelled to abandon it they made their way back to Vladivostok unassisted and took ship for Europe. The important towns along the Ussuri and Siberian Railways, as far west as Lake Baikal, were occupied by foreign troops. Semenov was left in Chita, Kalmykov in Khabarovsk. In February, 1919, in order to defeat the Japanese party's purpose of monopolizing the management of the Trans-Siberian and Chinese Eastern Railways, the Inter-Allied Railway Commission was formed, in which the American engineering mission already mentioned was given the control of technical matters.³ The commission's existence was to terminate, by agreement, when the foreign troops were withdrawn from Siberia.

Kolchak, sometimes aided, sometimes hindered, by his Cossack subordinates, maintained his campaign for the restoration of monarchy in Russia and Siberia for about a year. In June, 1919, the Council of Four at Paris promised him food, munitions, and supplies. Beyond such assistance the general Allied policy was "hands-off", and without military support Kolchak was unable to conquer the country against the guerilla warfare which was demonstrating that he had failed to keep the people's confidence. By December, 1919, he had fallen from power and in the following February he was shot by the Bolsheviki. When it became clear to the intervening Powers not only that their efforts were regarded as gratuitous but that the intervention was so hated by the Siberians that it was driving all classes into the Soviet camp all but Japan withdrew their forces, leaving only sixty Americans to guard the radio station on Russian Island.

Unfortunately, the troops were withdrawn a few months before the last of the Czecho-Slovaks had embarked, making it possible for Japan to maintain the intervention with some apparent justification. Accordingly, she not only continued the occupation but sent additional troops to a total of 50,000, though she had been limited by the original invitation to 7,000.⁴ With these added forces and freed from the restraint previously imposed by the co-interventionists, Japan attacked the troops of the Partisans and prevented them from securing the fruits of their victory over Kolchak in the

³ C. W. Ackerman, "Japan's Ambitions in Siberia", in *Current History*, April, 1919, pp. 109-112.

⁴ The published statements vary concerning the numbers actually despatched to Siberia. The Japanese War Office stated on Jan. 31, 1919, that up to Nov. 1, 1918, a total of 73,400 troops had been sent over but that 13,800 of these were recalled in the succeeding months and that 34,000 more were to be recalled, 20,000 in January and February, 1919. (*Current History*, Apr. 1919, p. 121.) According to the *Statesman's Year Book*, 1921, the Japanese forces had been reduced to 39,000 at the end of 1919, but were increased to 50,000 in the spring of 1920. Figures given to the writer by the Japanese Legation at Peking were far smaller than any cited above. In 1921, after the evacuation of Baikal, reduction again took place. When the order to evacuate the mainland of Siberia was issued Japan had approximately 25,000 men in the Maritime Province. Between 5,000 and 6,000 troops were left in Northern Sakhalin. Of the troops of the other Powers, the United States sent 9,000, China 2,000, Great Britain, France and Italy 1,500 each.

Maritime Province. She announced that her occupation would continue until Siberia was safe for her nationals to live in and until the danger of disturbance to the general peace in Korea and Manchuria had disappeared.

It was at this time that the Japanese, on the plea of protection to Japanese civilians, occupied additional points in the Maritime Province. The most consequential incident occurred at Nikolaievsk on the Amur, where, after the Japanese had broken a truce and attacked the Russian garrison, the latter massacred 120 helpless Japanese prisoners. As a guarantee of indemnity the Tokyo Government in July, 1920, ordered that Northern Sakhalin be occupied. The American Government inquired the reason for the occupation, suggesting, according to a Tokyo abstract of its note, that there was no connection between the occupation and the incident out of which it had arisen.⁵

Japan's action in Sakhalin was supplemented very soon by the appropriation of the Kamchatka and lower Amur fisheries, which were farmed out largely to Japanese fishermen, causing suffering to the local Russians and a loss of revenue to the governments of the Soviet Republic and the Far Eastern Republic to which the respective fisheries belonged. Presumably Japan adopted this method of assuring the renewal, at greater advantage to herself, of the Russo-Japanese Fisheries Convention which had expired. The month of April, 1920, had seen, also, an agreement forced upon the Zemstvo of Vladivostok by which a "neutral zone" was created along the Ussuri Railway, running from the southern border of the Maritime Province north 250 miles to the town of Iman, and also for a distance along the Suchan Railway in the south end of the province. Into this zone no Russian troops, whether or not they were the recipients of Japanese friendship, were to enter.⁶ This agreement was not binding upon the Far Eastern Republic but it was, in the main, observed by its forces to avoid an open clash with the Japanese.

The Japanese policy has been the support of disorder. It is clear, from the accounts of various American eye-witnesses, that the Japanese military forces gave open support to various reactionary elements and in doing so participated in cruelties toward the Siberian population.⁷ Meanwhile the Japanese military leaders were demanding concessions of mineral and other rights in such a way that the demands might be disowned by the government if they turned out to be unsuccessful.⁸ This they were doing in spite

⁵ *Japanese Intervention in the Russian Far East*, pamphlet published by the Special Delegation of the Far Eastern Republic to the United States of America, Washington, 1922, pp. 29-36; also *Current History*, Sept. 1920, p. 1086.

⁶ *Japanese Intervention*, pp. 115-117.

⁷ See article by Capt. S. C. Graves entitled "Japanese Aggression in Siberia" in *Current History*, May, 1921, pp. 239-245; also evidence of Major-General Graves, who commanded the American forces in Siberia, and Col. Morrow, given before the Senate Committee, April, 1922.

⁸ Article by Dr. Reinsch, quoted above.

of general public opinion in Japan which was always opposed to the prolonged occupation of Siberia.

The creation of an apparently independent state, eschewing communism and possessed of great mineral and timber wealth, was determined upon by the Siberians in order, if possible, to persuade the world of their democracy and moral stability and thus to gain its support toward securing the evacuation of the Japanese forces.⁹ In April, 1920, a convention of moderates from the region about Verkhne-Udinsk declared the establishment of the Far Eastern Republic. Within a month Soviet Russia extended her recognition. During the year the Japanese retired from the Amur and Baikalian Provinces and the bands of Semenov, Kalmykov and Kappel were driven east and south. Ungern, one of Semenov's generals, conducted an expedition into Mongolia and captured Urga, which later he made a base of operations against Chita. On February 12, 1921, the Constitutional Convention met in Chita and by April 26 it had adopted a constitution providing, as it declared, for a democratic republic.

During June, 1921, the Republic was compelled to meet attacks at three points: at Vladivostok, where the "White" or counter-revolutionary forces, assisted by Japan, set up the Merkulov Government,¹⁰ at Khabarovsk, which Semenov, who had returned from a vacation at Port Arthur, failed to take, and at a border town between Urga and Chita, where Ungern was ignominiously defeated by Soviet troops which still maintain their occupation of Urga. The Chita Government worked hard to arrive at a peaceful *modus vivendi* with Japan, which, in the summer of 1921, still retained control in Vladivostok, Nikolaievsk and other places, thereby quite thoroughly dominating the Provinces of Primorsk and Sakhalin, including the Ussuri and Suchun Railways, the links connecting Vladivostok with the Trans-Siberian at Khabarovsk and with the Chinese Eastern at the Manchurian border, and bottling up the potentialities of commerce with the West. On August 26, the Dairen Conference was opened between representatives of the two Governments. It is not unlikely that the Japanese Government, which had recently been sounded by President Harding on the idea of a conference at Washington to consider Far Eastern and disarmament questions, hoped to be able to present such a conference with a *fait accompli* or at least the evidence of its generous intentions in Siberia.

This conference continued, with several minor deadlocks and prolonged adjournments, until April 16. The actual negotiations and other documents have not been made public but it is clear from the published statements of both sides that the cause of the breakdown after so many months

⁹ "The President of the Far Eastern Republic", by H. V. V. Fay, in *Asia*, Vol. XXI, Oct. 1921, pp. 876-880, 894.

¹⁰ The "Merkulov Brothers" were not displaced until August 8, 1922, when General Dieterichs, another "White" leader, was elected to head the Government. *Peking and Tientsin Times*, Aug. 16, 1922.

of deliberation was the refusal of Japan to evacuate Vladivostok. A trade agreement had been drawn up which was satisfactory to both sides. Because of Japan's insistence that an indemnity for the Nikolaievsk incident must be treated as a separate matter the Far Eastern Republic had consented to negotiate separately on it. A military agreement had been under discussion concurrently with the trade agreement. The Tokyo delegates insisted that the evacuation question, which was to be settled by the military agreement, could be decided only after the trade agreement had been signed. The representatives from Chita were equally insistent that a near date for evacuation must be definitely agreed upon and they were willing to sign the trade agreement only upon the condition that the military agreement, containing an acceptable evacuation date and excluding certain Japanese requirements amounting to a deprivation of adequate coast defenses, should be signed concurrently.¹¹

During the progress of the Washington and Dairen Conferences revelation was made of certain alleged agreements between France and Japan providing for the landing of the remnants of the army of General Wrangel, the last of the "Whites" to challenge Trotsky's forces, at Vladivostok and for the protection of French interests in the Chinese Eastern Railway in return for French support of a Japanese protectorate over a "free republic in the Far East".¹² After the arrival of Wrangel's men an army was assembled, constituted of a mixed lot of reactionaries and this army, which was provided with an armored train and permitted to go through the "neutral" zone, actually captured Khabarovsk about Christmas, 1921. The Partisan forces were taken by surprise as they had not anticipated attack while the Dairen Conference was proceeding. Soon after that date they recaptured Khabarovsk and pursued the enemy down the railway line, finally crossing the boundary of the "neutral" zone set by the Japanese. This action brought the Japanese troops into open conflict with the Republic's army and very severe fighting took place, in which the Chita forces were driven out of the "neutral" zone. Since it is the essence of neutrality that impartiality prevail in the neutral's treatment of belligerents, Japan's tactics prove that her so-called neutralization was but a very thin disguise for a strategic area defending Vladivostok and providing refuge for hard-pressed counter-revolutionaries.

At the Washington Conference the Committee on Pacific and Far Eastern Questions gave considerable attention to the situation in Siberia. Baron Shidehara gave assurances that it was Japan's fixed policy to respect Russia's territorial integrity, the Open Door and the right of Russians to settle their own affairs. His reference to America's cooperation in the intervention in Siberia gave Mr. Hughes an opportunity, which he utilized with a candor

¹¹ See *Peking and Tientsin Times*, April 20 and 24, 1922.

¹² *Ibid.*, Jan. 7, 1922. The published documents state the condition made by France that "there should be no idea of permanent occupation or annexation."

amounting to bluntness, to state the attitude of the American Government toward the course events have taken since the American troops were withdrawn. His statements were concise enough: Japanese troops should have been withdrawn either immediately after the departure of the Czechoslovak troops or within a reasonable time; the Nikolaievsk incident was not a sufficiently serious catastrophe to justify Japan in occupying Russian territory as a means of securing a suitable adjustment with a future Russian government; on May 31, 1921 the United States had informed Japan that her occupation of Siberian areas "tends rather to increase than allay unrest and disorder in that region" and that "the Government of the United States can neither now nor hereafter recognize as valid any claims or titles arising out of the present occupation and control"; finally Mr. Hughes took occasion to "reiterate the hope that Japan will find it possible to carry out within the year their expressed intention of restoring Sakhalin to the Russian people". These assurances and statements were made part of the record of the Conference.

The Genoa Conference witnessed a warm passage at arms between Viscount Ishii, representing Japan, and Mr. Tchicherin, the Soviet Foreign Minister, speaking in behalf of the Far Eastern Republic. The former declared that Japan could not evacuate without a settlement in compensation for the Nikolaievsk massacre. Tchicherin countered with the assertion that the treacherous attack of Japanese soldiers was the cause of the blood shed. The Conference included the Far Eastern Republic in the Non-Aggression Pact, Japan inserting a saving clause excepting her occupation.

On July 1, 1922, Tokyo announced formally the decision of the Japanese government to withdraw all its troops from the Maritime Province by November 1. Subsequently the withdrawal order was extended to the main land opposite Sakhalin Island, of which Nikolaievsk is the center. In the absence of any definite statement respecting the island it was surmised that Japan was holding that as trading-stock and intended to secure in return for it liberal concessions of an economic nature if not an administrative lease similar to those which have been the bane of China, or an option for its purchase.¹³

The last important incident in the diplomatic career of the Far Eastern Republic was the Changchun Conference between Japan, the Soviet Republic and the Far Eastern Republic. This opened on Sept. 4, 1922 and was ruptured on Sept. 25.¹⁴ Its purpose was to reconcile outstanding sources of disagreement. The Russian republics wanted Japanese recognition, trade and capital, the last if they could get it on non-monopolistic and non-

¹³ Vice-Minister of War Kojima stated recently that there were twenty-nine Japanese companies in Northern Sakhalin, four concerned with forestry, six in mining, seven with oil and twelve with fisheries. *Peking and Tientsin Times*, Sept. 5, 1922.

¹⁴ The "White" Government at Vladivostok was not represented.

political terms. Japan wants Russian trade and a reserved seat at the distribution of the mining, forest, railway and oil concessions that will be necessitated if Siberia is to be developed. The Russians do not feel particularly friendly toward Japan. They realize that they are impotent to develop their resources alone but they are determined to grant concessions only to individuals and organizations of their own choice.

The Changchun Conference proved to be more than a resumption of that of Dairen. A. A. Joffe, who headed the combined Russian delegations, is rated among the Soviets' foremost diplomats. He made it clear from the beginning that the policies of Moscow rather than those of Chita were to dominate the Russian proposals and attitude. He first demanded that the negotiations cover a general trade agreement between Japan and all Russia.¹⁵ The Japanese, however, insisted upon limiting the scope of the conference to Far Eastern affairs, Russia to sign the ensuing agreement as an interested party. Thereupon M. Joffe called for a prior statement of Japan's prospective policy regarding the munitions at Vladivostok and the evacuation of Sakhalin. The reply on the first point was that the munitions would go to the Far Eastern Republic if a trade agreement were signed and placed in operation before the completion of evacuation; otherwise they would go to the "White" Government at Vladivostok;¹⁶ on the second point Japan stated that Sakhalin would be evacuated when a recognized Russian government had agreed to a suitable indemnity for the Nikolaievsk incident. The Russian delegation was willing temporarily to waive the arms decision but declared that evacuation must precede any discussion of indemnity and declined to proceed with the conference unless the Japanese set a date for the evacuation of Sakhalin. Upon the rock of Japanese refusal to accede to this demand the Changchun Conference split and foundered. In declaring that the Russians had repudiated the Dairen statement agreeing to separate negotiations concerning an indemnity for Nikolaievsk the Japanese neglected the general condition laid down at Dairen as precedent to any agreement, viz., evacuation, of which there was no qualification.¹⁷

The rupture of the Changchun Conference left Japan and the Far Eastern Republic further apart than they were when it opened. This was due to the intervention of Moscow with insistence upon total evacuation and the sacrifice of immediate commercial relations to the larger policy of recognition for Soviet Russia, in fact if not in word. The precipitate action of the Russian delegations was not the result of sudden resentment at the position taken by the Japanese but the evidence of a policy previously enunciated at Genoa and the Hague of standing firmly, if not defiantly, for an international position of equality. That policy the Russians considered would have

¹⁵ Statement of Russian Delegations, *Peking Leader*, Sept. 14, 1922.

¹⁶ The munitions were the property of the Soviet Government as the successor of the former government of Russia to which they had been sold but which had not paid for them.

¹⁷ *Japan Chronicle* (Wkly ed.), Sept. 7-28, 1922; *Peking and Tientsin Times*, Sept. 1922.

been disparaged had they entered into conventional relations with Japan as long as Japanese troops remained on Russian soil.

The true nature of the relationship between the Far Eastern Republic and the Soviet mother-state was placed beyond doubt by the course of the recent negotiations. As a spectator at Changchun informed the writer Mr. Janson, the chief delegate from Chita, practically stood at attention in M. Joffe's presence. The importance to all Russians of the problems involved in the liquidation of the intervention necessitated their treatment as all-Russian matters. Moscow assumed the rôle demanded by the situation and Chita was relegated in foreign affairs to the position of a self-governing commonwealth. It seemed, then, unlikely that the Far Eastern Republic would regain the appearance of independence but would, within no lengthy period, become an autonomous province of the Russian Socialist Federated Soviet Republic. In all but name it has never been anything else, though it has conducted its own foreign relations, in part, and has maintained a distinctly more liberal type of government. An agricultural state, it has been opposed to communism. There is, however, no racial friction and no separate nationalistic feeling,—rather race and nationalism are strongly uniting forces. The policy of friendship to small landholders and to outside capitalists, which the Soviets have found the only *modus vivendi*, largely breaks down the few obstacles to closer political relations. On the other hand, the Siberians will feel more and more the need of Soviet protection against foreign powers. The prophecy was justified that for the Far Eastern Republic the Changchun Conference was the beginning of the end.

The evacuation of the Japanese forces from the Maritime Province was completed on October 25, 1922. As had been anticipated the defense of the "White" forces immediately collapsed and the Red troops took possession of Vladivostok and the munition stores. With this event the turn of the buffer state had been served and on November 14 the Chita Government voluntarily dissolved, handing back to Moscow the powers received from her only two years earlier. Thus terminated successfully a unique experiment in constitutional organization for the conduct of international relations.

In recognizing local differences in Siberia and permitting a local group to work out its own destiny,—as far as this could be done without danger to the Central Government,—the Soviet leaders exhibited the same foresight and the same theory of government that has distinguished their policy in other regions, *e.g.* the Ukraine. They do not regard the establishment of so-called states as drawing a political boundary line and creating a sovereign enclave within the whole body of Russians. On the other hand these enclaves have been conceded a wide range of powers both in internal and foreign affairs. They constitute a type unique among modern states of the west, their relationship to the parent state being not unlike that formerly existing between China and Korea and today still in existence between China and Tibet.

The temporary establishment of a buffer state in the Far East has been a profitable experiment for the Soviet Government. The representatives of Chita in foreign countries, though unrecognized, have been more acceptable than those of Moscow, yet their diplomacy and propaganda have been effective in preparing the way for the latter. The Soviets have been enabled to feel out the attitude of Japan regarding a commercial agreement without recognizing the validity of her occupation, while Japan has been deprived of the bogey of Bolshevism, her strongest argument for the continued occupation of Russian territory. Events have marched rapidly, however, placing Moscow in a position to assert herself. There was no indication that the government at Chita resented its subordination, which, as already suggested, it had always recognized. Its position was one of consistent effort toward the rehabilitation of the Russian people and it appeared likely to follow the lead of its parent state, as heretofore, even at the sacrifice of its separate existence. Apparently it is content once more to form an integral part of the Russian commonwealth.

THE QUESTION OF EAST CARELIA

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Eastern Carelia is composed of the governments of Kemi, Archangel or the Provinces of Viena, Poventsa, Petroskoi, and the Olonets. It is bounded on the west by the eastern frontier of Finland, on the south by Lake Ladoga and the River Svir, on the east by Lake Onega and the White Sea, and on the north by the Arctic Ocean. It is about 300,000 square kilometers in area with a population of about 175,000 people. Of these 134,000 are Carelians of the Fenno-Ugrian stock; and the remaining 41,000, who speak Russian to a greater or less degree, are Vepses, Carelians, Finns, Laplanders, and Russians.

As early as 350 A.D. we hear of the Carelians in their present abode while Finland bordered on the regions of Hermaneric, the Goth. In 1227 under the pressure of the army commanded by Iaroslav Vsevolodovitch of Novgorod a part of the Carelians were converted to the Greek Orthodox religion. In 1323 the Schlussemburg peace between Russia and Sweden dismembered Carelia. And gradually during the fourteenth century it became more and more subjected to Novgorod. With the latter's fall in 1478 Carelia came under the domination of Moscow, and finally under Catherine II it was proclaimed a part of Russia. In 1809 at the peace of Frederikshamn the two portions of the Fenno-Ugrian race living in Carelia and Finland were united under the Russian rule. A common culture, language, and race facilitated natural economic, political, and social ties until the doctrine of self-determination gave form to the latent aspiration in the hearts of the Carelians, (namely, union with Finland or independence).

In 1905 at Uhtua a Carelian assembly sounded the first note of racial consciousness by demanding relief from a relentless Russification policy. This petition was signed by 3,000 people and demanded a constitutional form of government, political rights such as voting and the freedom of assembly, a redistribution of forest land, and the use of the indigenous language for culture and religion. But there was no relief obtained.

Then cooperation between Carelia and Finland became even closer after 1906. At that time the only place of educational, social, and economic opportunity open to the Carelian youth was Finland. Russia met all subsequent petitions by exiling the leaders to Siberia, closing libraries, lecture halls and schools. She forbade or hindered road construction, religious life, and cultural activities of all sorts.

Thus from 1906 to 1917 eleven years of oppression worked great hardships. In 1917 the inhabitants of the Olonets and Viena sent to the revolutionary government in Moscow a petition requesting their rights and national existence. On July 13 an assembly at Uhtua fixed the boundaries at the Svir, Lake Onega, the Uiku, and the White Sea. This same gathering demanded a return of the forest lands seized by the Russians, for the exploitation of which the Murman railroad had been built.

With the change in the revolutionary government and with the advent of Bolshevism complete independence was felt by the Carelians to be the only solution of their vexed problem. This was voted by the national assembly in Uhtua in 1918. On the 17th of March reunion with Finland was decided upon and the whole of Carelia accepted it. It was agreed the conditions were to be fixed by elected representatives sent to treat with Finland.

But at this juncture the question became an international issue. The British troops were sent to the Murman territory and violent fighting made it a theater of war. In March, 1918, the Carelians took a hand in order to throw off the yoke of Russian oppression. To complicate matters refugee Finnish Reds in Carelia formed a volunteer detachment to regain that country for the Russians, and they were successful in driving back the Carelians. Only the parish of Repola remained outside Russian domination. In autumn 1918 Murman lost its international importance. The Germans withdrew and with them the Finnish troops. Thus the English soldiers were drawn up along the frontier against Red Russia.

When the year 1919 came Carelia of Viena lay within the sphere of British action and Repola within the Finnish and Carelian, while all the rest suffered under the Russian reign of terror. In the spring of that year an assembly in the town of Kemi based its aspirations on the doctrine of self-determination and a committee of five was elected to seek recognition of independence at the Peace Conference in Paris. At the same time refugee Carelians in Finland, ensemble, presented their case to the representatives of the Great Powers at Stockholm.

Finland now agreed to the request of Porajarvi for protection. This it will be remembered had already been done in the case of the parish of Repola. In the autumn of this same year the British troops having been withdrawn, a resurgence of Bolshevik forces into Carelia followed. They aimed to recover it but were very severely beaten by the natives at Kiestinki and retired routed on the 20th of October. A change in the governmental structure and the penetration of Russia into the very heart of the territory after its first defeat made a new meeting of the Diet a very precarious undertaking. Nevertheless it took place from March 20 to April 1, 1920, and in the presence of Russian troops an almost unanimous vote for union with Finland was polled. Repeated appeals to Finland found answer in the notes of that government to other states explaining the situation and asking for aid.

In the summer of 1920 peace negotiations began at Dorpat between Russia and Finland. The Finnish delegates were instructed to demand the right of self-determination for Eastern Carelia and specific guarantees for Repola and Porajarvi. Also emphasis was to be laid on the question of boundaries. These demands were met by Russia only half-heartedly and she remained master of Carelia until October 14, 1920 when the treaty was signed. To that pact was annexed guarantees for the parishes above-mentioned as well as promises of a locally recruited police force for East Carelia.

Russia had, however, already formed a separate worker's commune of East Carelia whereupon Finland accused her of violating the terms of the treaty. A series of bloody border skirmishes again raised hopes to fever heat, but they soon dwindled.

Finland's only source of relief lay in the League of Nations. She appealed to this body on the 8th of January 1922. It will be remembered that this appeal had been preceded by a memorandum to the Baltic Commission on the 15th of July 1919. But Russia now maintained Finland was responsible for revolts in Carelia and accused her of violating the treaty. These accusations, however, came with poor grace from the Soviet Government.

On January 12, 1922, the Latvian delegation proffered its good offices to aid the Council hoping it (the Council) would accept the role of mediator for peace in the Baltic. Later, at the ninth meeting of the Council of the League, January 13, 1922, Pusta for Esthonia and Saskenazy for Poland offered respectively their good offices in the matter. Finally at the eleventh public meeting, January 14, 1922, the following resolution was adopted.

The Council of the League of Nations, having heard the statements submitted by the Finnish delegation . . . and the statements of the Esthonian, Latvian, Polish, and Lithuanian representatives, is willing to consider the question with a view to arriving at a satisfactory solution if the two parties concerned agree. The Council is of the opinion that one of the interested states members of the League, which is in diplomatic relations with the Government of Moscow, might ascertain that government's intentions in that respect.

The Council could not but feel satisfaction if one of these could lend its good offices . . . to assist in the solution of this question. . . .

The Secretary General is instructed to obtain all necessary information for the Council.¹

This became then a question of interpretation of a treaty between two states, one a member of the League and the other not. The points at issue were Articles 10 and 11 together with the annexed statements to the peace of Dorpat. The former required the withdrawal of Finnish troops from Repola and Porajarvi. It gave East Carelia the right of self-determination and modified the treatment of the inhabitants of the two parishes. The latter dealt with autonomy of East Carelia, amnesty to fugitives, and non-militarization of the frontiers along two districts in question.

¹ *Official Journal*, No. 2, 3d yr., Feb. 1922, pp. 107-108.

At the eighth meeting of the Council, February 1, 1923, the question came up again. It was reported that Russia, approached by Estonia, had refused to submit the case to the League for adjudication. M. Salandra proposed the reference of the question to the Permanent Court of International Justice for an advisory opinion.

It was decided that the members of the Council should examine the question individually, and that, in conformity with the Council's resolution of January 14, 1922, the Secretariat should continue to collect any information which might be of use.²

M. Enckell, the representative of Finland, read a report at the seventh meeting of the Council, April 20, 1923. President Wood suggested the Council consider the statement at leisure and discuss it at a further meeting. It was adopted.

The eighth session was productive of results. It was held on the 21st of April and the following resolution of M. Salandra was adopted:

The Council of the League of Nations requests the Permanent Court of International Justice to give an advisory opinion on the following question, taking into consideration the information which the various countries concerned may equally present to the Court:

"Do Articles 10 and 11 of the treaty of peace between Finland and Russia signed at Dorpat on October 14, 1920, and the annexed Declaration of the Russian delegation regarding the autonomy of Eastern Carelia constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?"

The Secretary General is authorized to submit this application to the Court, together with all the documents relating to the question, to inform the Court of the action taken by the Council in the matter, to give all necessary assistance in the examination of the question, and to make arrangements to be represented, if necessary at the Court.³

On the 23d of July, 1923, the Court gave its decision after a month of deliberation. The Court took an entirely different view of the question from that taken by the Council. It considered the main problem immediately before it was its competency, not the interpretation of the treaty. The reasoning follows:

The League of Nations treaties do not bind non-member states and any decisions or jurisdiction over questions where one is involved can only be exercised by consent of the non-member. Russia's refusal to submit the question has made it impossible for the Court to give a decision in this case. As for the settlement of the question between Russia and Finland, that can only be done by an examination of the documents from which it arises. A finding on this matter now would constitute a settlement of the case which is not the purpose of the Court, nor does it fall within its jurisdiction. Finally the Court finds that since Russia will not give her consent it (the Court) can

² *Official Journal*, No. 3, 4th yr., Mar 1923, p. 222.

³ *Ibid.*, No. 6, 4th yr., June, 1923, pp. 577, 578.

do no more than await the actions of the League to bring both parties together in cooperation.

Four of the judges felt that the Court was competent to handle the question. They were Weiss, Bustamante, Nyholm, and Altamira. The full bench consisted of Loder (president), Weiss, Finlay, Nyholm, Moore, Bustamante, Altamira, Oda, Anzilotti, and Huber. One deputy, namely, Wang Chang-Hui sat on the case. M. Enckell presented the Finnish case.

The Finnish Foreign Office immediately declared that it still held Russia bound under the treaty of Dorpat. The decision was regarded there as a weakness in the Court and an attempt to throw off domination by the Council. Friends of the Court rejoiced in the finding since they saw independence and vigor in the new tribunal. James Brown Scott is reported to have said:

Recognizing the independence and equality of states in explicit terms, the decision is calculated to rejoice believers in judicial settlement, to convince the lukewarm and indeed to cause opponents to reconsider the reason for their opposition. A simple decision such as this is a justification of judicial settlement and a promise of an immense and beneficent usefulness.⁴

Due to the Greek-Italian question which had come to a head by this time the interests of the League were occupied in another direction and the question of East Carelia was passed on to the Sixth Commission. This reported on the 24th of September, 1923. M. Miercowicz stressed the importance of the question and it was decided that the Council should continue to collect information. The report was approved and the question was placed on the agenda of the Assembly.

On the 27th of September in the Assembly, after a short address by Enckell, Salandra, who acted as rapporteur, gave a short report divided between two points. The first simply recognized the findings of the Court in the matter. The second proposed, in spite of the Court's declaration of incompetence and suggestions contained therein, that the Assembly must not be hindered, for the sake of peace, from taking all action necessary, even in a case where a nation was outside of the League; and even if that state refuses to take part in the negotiations and arrangements. M. Branting thought the second part should be omitted, but the Assembly retained it at the suggestion of Hanotaux and Lord Robert Cecil. The formulation of the questions at issue were then entrusted to the Secretariat.

The last reports tell of deeds of violence on the Carelian side of the boundary. Russia maintains Finland is responsible and Finland emphatically denies the accusation. A lively exchange of notes is going on, although nothing more serious than what has already happened is taking place. We must not forget, however, that war is possible at any minute depending on a deviation in the Russian policy. Aggression from the Finnish side would be preposterous and no fear need lie in that direction. But Finland fears for the next Russian move.

⁴ *New York Times*, July 24, 1923, p. 1, col. 1.

EDITORIAL COMMENT

THE JANINA-CORFU AFFAIR

If ancient customs are still to be regarded as supplying the substance of the law of nations, the *lex talionis* is indisputably a part of that law. It is a simple formula. If you are injured, injure still more in return; and thus obtain justice!

Before we can make much progress in satisfying the growing juristic sense of modern civilized nations, it will be necessary to realize that international custom is not an adequate law-maker but merely a registration of a state of mind that requires further analysis and review.

This has long been recognized, and intelligent opinion, both popular and professional, is at present alive to the necessity of repudiating precedent in international affairs as rapidly as enlightenment permits the amelioration of practice.

In nearly every department of human activity intelligent agreement, based on some clear principle of rectitude, has been substituted for unreflecting violence. What we call "civilization" is chiefly the result of this substitution. Even in international affairs it has made some progress, but far less than in most other forms of human relationship.

The reason for this is no doubt the conception of "sovereignty" as the irresponsible *potestas suprema* by which the world has so long been ruled, reinforced by the disposition of even more liberal forms of government to claim all the prerogatives of those cruder and more brutal forms which they have superseded.

There is, however, a process of change in this conception of sovereignty now subconsciously taking place which will inevitably, if it is carried to its logical conclusion, result in the extension of the substitution of voluntary agreement for imperative command in the law of nations, as it is being substituted in the sphere of civil government in all modern states. The process consists essentially in abolishing violence, even in the enforcement of law, by making the law itself its own best argument for obedience. Experience has taught and continues to teach that the *lex talionis* does nothing for the elimination of wrong, but merely multiplies and perpetuates its repetition and its consequences.

The assassination of three international commissioners of the Italian Government on Greek soil, at Janina, followed tempestuously by the forcible occupation of the island of Corfu, resulting in the death of innocent children, affords a fitting occasion for serious comment upon the progress made in international adjustments. These comments are not offered in the spirit

either of condemnation or of condonation, but with the purpose of measuring the stage of progress that has been attained.

If precedent alone could determine the rightfulness of the occupation of Corfu, justification certainly was not wanting, and the general indignation expressed at the time of the incident was superfluous. In America we appear to have wholly forgotten the forcible occupation of Vera Cruz in 1914, where the provocation was far less serious and the action even more reprehensible. There was, indeed, an important difference between the two performances, and to that we must later give consideration, but in both instances, without any appeal to organized justice, the spirit of arrogance, on the pretext of national prestige, resulted in the loss of entirely innocent lives.

There are antecedent causes in the Greco-Italian embroglio which deserve an attentive study. The first of these is the exasperation of national sensibility, and the second its influence in urging on immediate action and offering justification for violence.

Neither the assassination at Janina, if as charged it was sanctioned by the Greek authorities, nor the cannonade on Corfu was the result of a single isolated antecedent. After a period of mutual friendship and sympathy there had, in 1912, supervened a distrust and a hostility on the part of Greece which had produced a corresponding sentiment in Italy. So long as the Sultan of Turkey was a common enemy, all had gone well between the Greeks and the Italians. When, in 1911, the Libyan War broke out, the Greek press was full of enthusiasm for the Italian "brothers", and every Italian victory over the hereditary foe was celebrated at Athens. When later the thirteen "Greek islands", as they were held in Greece by right to be,—the Dodekanese, as they were loosely called,—were taken as pledges by Italy, there was rejoicing in Hellas; and when these islands were reported to have been "liberated" by the proclamations of the Italian admirals, and an insular congress was held by the inhabitants in the monastery at Patmos to establish an "autonomous State of the Aegean", as a writer well expresses it, "Italy and Greece celebrated a brief honeymoon." Then, in October, 1912, came the Treaty of Lausanne, by which the dream of an insular autonomous Greek state was dissipated. Italy "temporarily" retained the thirteen islands. The occupation, it was announced, was to last only until the last Turkish soldier had left Libya. That happened some time ago; but, notwithstanding two alleged agreements of evacuation, Italy still retains possession of these islands.

From the first this "temporary" tenure aroused suspicion in Greece. The population of these islands, almost entirely Hellenic, has now for ten years detested the Italian supremacy, and the spirit of irredentism has spread to the whole of Greece—an impulse to war which only the Greek defeat in Turkey and other causes rendered inoperative.

In 1913, the feeling engendered by the occupation of the islands taken from Turkey was accentuated by the creation and delimitation of Albania

as an independent state. A collision between Greece and Albania over the possession of two provinces caused a new sense of hostility, this time felt in Italy as much as in Greece. The Albanians claimed the provinces as "Southern Albania", the Greeks as "Northern Epeiros".

The feeling of alienation between the two countries now became one of bitterness, which soon voiced itself in words of warning. "If you wish to remain friends of Italy," said Signor Giolitti to Mr. Venizelos, "do not touch Valona." At the Conference of Corfu, in 1914, says Mr. William Miller, who had personal knowledge of the subject, "The feeling against Italy in Corfu at that time was such, that when an Italian steamer ran aground upon the reef near the islet of Vido, she had to remain there for several days, because no Corfiote could be induced to get her off the rocks!" He also records that his wife, when attending the jubilee of the union with Greece, was begged by the chairman of the exposition not to speak Italian, for "otherwise", he said, "the Italians will claim that this is an Italian island."

It was upon this background of suspicion and hostility that the assassination at Janina occurred. Then came the second act in the drama. General Tellini and his suite were attacked and killed while on their mission as Italian members of the international commission to delimit Albania.

It is unnecessary here to sit in judgment upon the circumstances of the assassination or to state the minute particulars. The official investigation will in due time furnish such information as is attainable. What is of importance for these comments is that the incident, in the conditions of antecedent mutual suspicion and hostility, could not fail to awaken deep indignation in Italy, a volume of wrath and resentful emotion that created an occasion for the head of the state, voicing the sentiment of the nation, not only to demand redress but to inflict, in the interest of Italian prestige, a conspicuous public humiliation upon Greece. In doing this by the immediate military occupation of Corfu, Signor Mussolini was undoubtedly obeying the will of a united people. As in the case of Vera Cruz, the slaughter of innocent persons was considered only an unfortunate by-product of a necessary action! Thus closed the second act of this pitiful tragedy.

That which made the occupation of Corfu really appalling is the widespread belief that such an incident could no longer happen in Europe, under the aegis of the League of Nations and the guardianship of the great Powers;—the trustees of peace. In this it differed from all precedents. The authorization of international custom was supposed to have been superseded by the authority and obligations of a covenant denying its legitimacy.

On this account more than on any other an almost universal public indignation relegated to second place the crime of assassination at Janina, and fixed its gaze upon the slaughter of the innocents at Corfu. The first, if one tries to find justification in human passion, seemed possibly an ordinary act of murder by irresponsible outlaws, a work of mere brigands that might happen in any country. Its sequence seemed a deliberate governmental

act by a great Power,—a trustee of peace,—bound by a formal obligation to an accepted code of honor. The practice of bandits was indeed charged by Italy to the Greek Government. Was a responsible government, even if this charge were true, to be permitted to make an assault upon an innocent population in order to punish the guilty?

The money penalty demanded of Greece was a heavy one; and the crime, if fixed upon the accused government by the evidence, justified a heavy indemnity. And yet it was a crime, if really perpetrated by a government, that no pecuniary indemnity could expiate. The whole controversy, in view of the nature of the charges, centres upon something infinitely more important than any amount of money. It was due to Italy that her grief should not find satisfaction at a price in gold, and to Greece that she should have her day in court.

All eyes turned spontaneously to Geneva. It was there, and not at Corfu, that Italy's charge and Greece's honor could find a real vindication. And Geneva was ready and waiting. The Council and the Assembly were in session.

It would be a satisfaction if it could be said at the present date that assurance had been given that in the future an arbitrary and indefensible action by a great Power against a small state can find redress at Geneva. In this the expectation of many has been disappointed. Much has been said in praise of the League's machinery for avoiding violence by conciliation. No one disputes the intention to bring such machinery into existence, but it would be a bold assertion to affirm that it exists in a sense that applies to any great Power.

Mussolini's attitude toward the League of Nations in this present case is what might happen in any instance where the national temper of a great Power happened to be involved. Such a Power could upon any occasion say, This matter is not one which concerns the League.

Article 15 makes it as clear as language can make it that "any dispute likely to lead to a rupture, which is not submitted to arbitration" (as under Article 13) "the Members of the League agree that they will submit to the Council." Was not the Janina-Corfu incident one of this character? It is superfluous to say that the occupation of Corfu was not an act of war but only the taking of a guarantee. There was a "dispute" over the assassination at Janina that was already more than "rupture". It is impossible to doubt that, whether guilty or not, Greece had a right of appeal to the Council, as she did appeal.

What was the attitude of the Council? The appeal remained, and still remains in its hands. "Till some settlement between the two countries took form, League delegates seemed unable to apply themselves to serious discussion of other subjects" writes an eye witness. "Assembly meetings were postponed altogether for several days—not, indeed, because they could not have been held, but because it was felt every effort must be made to

avoid giving opportunity for speeches. . . . They may not have made public speeches, they may not have passed resolutions, but their private discussions and their personal declarations have made it clear that on the main issue he had chosen to raise Signor Mussolini had ranged resolutely against him every nation in Europe, in America (North and South), in Asia and in Africa, so far as those nations were represented at Geneva." And yet the Assembly took no action!

And what was the reason for this ominous silence? The same writer answers in the terms of a spokesman of one of the smaller states, "that what the lesser states were fearing was some general deal—not at Geneva, but at Paris—between the three greater Powers in which Great Britain would be a party to some prejudicial compromise behind the backs of the world-parliament at Geneva. . . . All I have said here," he continues, "was being said daily at Geneva by nine out of ten of the delegates out of whom the Fourth Assembly was composed. The question cannot, moreover, be left here. Not only are the smaller nations conscious of the rivalry between the Ambassadors at Paris and the League at Geneva, but they are convinced that the Ambassadors' Conference is perpetuated mainly to enable the three great Powers to run Europe as they will." And it was to this "rival" Conference of Ambassadors that the Council, after silencing the Assembly, turned over the settlement of the Janina-Corfu controversy!

We may, indeed, be thankful that this Conference of Ambassadors was able to terminate the incident, as an incident, by inducing the Premier of Italy to evacuate Corfu, and to influence Greece to pay the indemnity demanded. We are not informed of the arguments employed in the conversations held in that secret councilroom, but it does not escape our recollection that the permanent Italian possession of Corfu would give Italy absolute control of the Adriatic; and as Italy had insisted that "Northern Epeiros" and Corfu could never be allowed to be in the same hands, so Italy has been on more than one occasion reminded that Corfu cannot be in Italian hands, and thus afford a safe pocket for the Italian fleet for incursions into the Mediterranean. As a question of diplomacy, it must have been certain to the mature statesmen of the Council, or at least to those who directed their activities, that the question of evacuating Corfu could be settled by the Conference of Ambassadors when it could not be determined by the League, because the former had the interests and the force to demand evacuation.

In commenting upon this so-called "settlement", which the advocates of the League proudly although somewhat nervously represent as a fruit of its efforts—at evasion?—the European writers regard it from somewhat conflicting points of view. In England there are those who declare that the Council would have acted had it not been for French opposition. In France it is well known that Lord Robert Cecil's spontaneous urgency for action was checked by orders from London. But apart from the battle-field of

recrimination and national propaganda it is certain that the Council failed to act because it was impotent, and the Assembly kept silence out of deference to the great Powers.

At this point it is not inappropriate to raise the question, What would have resulted if the articles of the Covenant which Lord Robert solemnly caused to be publicly read in the Assembly as indicating the duty of the League had actually been put into operation by the action of the Council? Everyone at Geneva understood that, if this happened, Italy would withdraw from the League and refuse to submit to the action of the Council. It was known also that under the direction of the Council not a ship could be depended upon to move or a regiment to march, to compel Italy to evacuate Corfu and to submit to the judgment of the Permanent Court of International Justice the amount of indemnity. Hence the caution of the Council, the silence of the Assembly, the disappointment of the advocates of the Covenant, and the transfer of the entire responsibility to the Conference of Ambassadors, as had been done in the adjustment of every other dispute of importance which had not been voluntarily referred to the League by the contestants.

But suppose there had been in the League a great Power that felt it imperative to insist upon the literal enforcement of the obligations under Articles 13 and 15 and the infliction of the penalties for the violation of them under Article 16, what would then have happened? It is appalling to think of the consequences of thus construing Italy, under Article 16, as being automatically at war with all the members of the League. And it would have been natural to say to the Power thus insisting upon the fulfillment of the Covenant,—the United States, for example,—“Since you insist on this, you are the one to execute the penalty”!

And thus we see how utterly futile is a plan for peace which incorporates the *ultima ratio* of the *lex talionis* as the basis of its structure, automatically imposing the violation of peace in the effort to enforce peace.

Happily, there was in the Council enough of diplomatic sense to see this, and to act upon it. Having no legal rule of judgment to apply, the Council could at best only have reached a compromise, and the Covenant was uncompromising. It demanded action. And so the problem was handed over to be settled in the manner of the old diplomacy by the Conference of Ambassadors, which is just what would have happened if the League of Nations had not existed.

The occasion is opportune for the question, Is there really any other way?

So long as international decisions rest upon force, no matter who exercises it, only a negative answer can be given. And it must be conceded that force is just as legitimate in the hands of the interested Powers themselves as in the hands of a Council made up of them, besides being much more effective.

There is place, however, for another supposition. Let us suppose that,

instead of a Permanent Court of International Justice before which no aggressor can be cited without his consent, the aggrieved nation could by previous agreement cite the aggressor before the court, with a legally defined procedure in a case of international tort, what would then be expected to happen?

In such circumstances Italy could find her guarantees in the court and in the law, and Greece could make a defense if her innocence rendered it possible. If Italy won her cause and Greece declined to accept the judgment, Italy could then act as executing a judicial decision. But is it probable that Greece would refuse to execute the decision? And, to go to the root of the matter, is it probable that, with such a prospect of being found guilty, any responsible government would ever countenance assassination?

Does it not appear possible, if the *lex talionis* were divested of its traditional justification in international relations, as it has been in so many others, that it would in the course of time wholly disappear from the thoughts of statesmen as a method of seeking justice?

The League of Nations, having revealed its incompetency under the pretension of preponderant power, might well consider if it did not seriously impede the progress of justice by rejecting the recommendations of its Commission of Jurists to bring all really justiciable cases within the compulsory jurisdiction of its court, and progressively to extend the range of justiciable cases by clarifying and developing the law of nations through the law-making conferences which its experiment has interrupted.

DAVID JAYNE HILL.

THE NEUTRALIZATION OF CORFU

Discussion of the recent Italo-Greek controversy seems to have taken little note of the fact that Corfu, occupied by Italian forces on August 31, 1923, as a "measure of temporary character, not as an act of war, but only to safeguard Italian prestige and to manifest its inflexible will to obtain reparations which are due in conformity to the usages of international law",¹ is neutralized territory.

The Republic of the Ionian Islands was placed by the treaty of Paris (November 5, 1815) under the protectorate of Great Britain, but the arrangement did not prove wholly satisfactory to the islanders, and upon the establishment of George I upon the Greek throne under the guarantee of Great Britain, France and Russia in 1863, Great Britain suggested union of the Republic with Greece. The European significance of the status of the islands was, however, fully realized, and in a note of June 10, 1863, Lord John Russell, British Foreign Minister, suggested that after the desire of the

¹ See Italian identic notes of August 31, 1923, to Greece, to the great Powers, and to Italian diplomatic representatives abroad, *L'Europe Nouvelle*, Oct. 6, 1923, 6: 1288.

people of the islands had been ascertained, a conference be held by Austria, Prussia, Great Britain, Russia and France, the first four being parties to the Treaty of Paris and the last three to the treaties guaranteeing the Greek dynasty. In this note Lord John Russell expressed his sensibility "to the value of Corfu as a maritime and military station" and of "the apprehensions felt in Austria and Turkey at the prospect of the abandonment of the Ionian Islands by Great Britain". "It has been suggested in England" he continued, "that Corfu might be retained while the other islands might be given up. But Her Majesty's Government conceive that it would be a perversion of the trust confided to them by Europe and a breach of faith toward the Ionian people, if Great Britain were to turn a portion of a single free and independent state under her protectorate, into a part of her military possessions and to make Corfu an element of her European power".² The result was the Treaty of London of November 14, 1863, ratified by the five Powers. This treaty provided for renunciation of the protectorate and union of the islands to Greece, but in view of the considerations mentioned, based doubtless on the strategic position of the islands with reference to the Adriatic, Articles 2 and 3 declared:³

Art. II. The Ionian Islands, after their union to the Kingdom of Greece, shall enjoy the advantages of a perpetual neutrality. Consequently no armed force, either naval or military, shall at any time be assembled or stationed upon the territory or in the waters of those islands, beyond the number that may be strictly necessary for the maintenance of public order, and to secure the collection of the public revenue.

The high contracting parties engage to respect the principle of neutrality stipulated by the present article.

Art. III. As a necessary consequence of the neutrality to be thus enjoyed by the United States of the Ionian Islands, the fortifications constructed in the Island of Corfu and its immediate dependencies, having no longer any object, shall be demolished, and the demolition thereof shall be effected previously to the withdrawal of the troops employed by Great Britain for the occupation of those islands in her character as Protecting Power. This demolition shall take place in such manner as Her Majesty the Queen of the United Kingdom of Great Britain shall deem sufficient to fulfill the intentions of the high contracting parties.

These provisions were subsequently modified. In the London Conference of January 25, 1864, Austria and Prussia gave their adhesion to an announcement by Great Britain, France and Russia, the three guarantors of Greece:⁴

1. That it is not necessary to insist upon the limitation prescribed by Article II of the treaty of 14th of November, as to the naval and military forces to be maintained by Greece in the Ionian Islands.

² Martens, *N. R. G.*, 18: 52.

³ *Ibid.*: 57; Holland, *European Concert in the Eastern Question*, p. 47.

⁴ *Ibid.*: 60; Holland, *op. cit.*, p. 50.

2. That the advantages of neutrality established by the same article in favor of the seven islands shall apply only to the Islands of Corfu and Paxo and their dependencies.

Consequently it was proposed to modify Article II of the treaty in the forthcoming treaty between the three Powers and Greece. This treaty was concluded on March 24, 1864, and after providing for the union of the islands with Greece declared:⁵

Art. II. The courts of Great Britain, France, and Russia, in their character of guaranteeing Powers of Greece, declare, with the assent of the courts of Austria and Prussia, that the Islands of Corfu and Paxo, as well as their dependencies, shall, after their union to the Hellenic Kingdom, enjoy the advantages of perpetual neutrality.

His Majesty the King of the Hellenes engages, on his part, to maintain such neutrality.

This article is still in force.

The occupation of territory as a measure of reprisal to enforce demands under international law has been frequently resorted to, as in the American bombardment of Greytown, Nicaragua, in 1854, the British bombardment of Kagoshima, Japan, in 1863, the British occupation of Corinto, Nicaragua, in 1895, the French occupation of the Turkish island of Mytilene in 1901, and the American occupation of Vera Cruz, Mexico, in 1914, and has been justified by text writers.⁶ Can such a procedure be applied against neutralized territory?

Germany declared that her invasion of the neutralized territories of Luxemburg and Belgium in August, 1914, "were not intended as acts of hostility" but were essential for self-defense.⁷ Luxemburg and Belgium, as well as Great Britain and France, however, considered such pacific occupations of neutralized territory contrary to the treaties of 1839 and 1867. They considered the principle that neutral territory is inviolable, established by customary international law as well as by the V Hague Convention of 1907, permanently applicable to territory neutralized by treaty.⁸

It is to be noticed that the Italian occupation of Corfu differs from the German occupation of Belgium and Luxemburg in that Italy was not a party to the treaty neutralizing Corfu. Unless it could be argued that this treaty created a status which had been accepted by the public law of Europe,⁹ Italy was, therefore, under no special limitations with respect to Corfu.

⁵ Martens, *N. R. G.*, 18: 65; Holland, *op. cit.*, p. 54.

⁶ Oppenheim, *International Law*, 3rd ed., Vol. 2, secs. 33-37. Some of these cases are referred to in comments on the Corfu occupation by Vittorio Scialoja, *L'Europe Nouvelle*, 6: 1203; A. L. Lowell, *World Peace Foundation*, 6: 170; Lord Robert Cecil, statement to British Imperial Conference, *London Times*, Oct. 13, 1923, p. 6.

⁷ U. S. Naval War College, *International Law Documents*, 1917, pp. 101-102.

⁸ *Ibid.*, pp. 53, 86, 116, 182.

⁹ This argument was advanced with reference to the status of Belgium by Visscher, *Belgium's Case, a Juridical Enquiry*, 1916, p. 142.

Great Britain, France and Russia, however, would seem under special obligations to object to the occupation.

Italy was, however, a party to the League of Nations Covenant, by Article X of which the members of the League agree "to respect and preserve against external aggression the territorial integrity and existing political independence of all members of the League." Italy has argued that occupation of Greek territory as a temporary measure of reprisal involves no want of respect for the territorial integrity of Greece. Certainly Article X contains a less sweeping prohibition of territorial occupations than does Article I of the V Hague Convention with respect to neutrals. The latter declares "The territory of neutral Powers is inviolable."

Lord Robert Cecil, in the British Imperial Conference of October, 1923, drew attention to the strong feeling in the League that "the occupation and bombardment of Corfu was, in the circumstances, not a defensible proceeding."¹⁰ Doubtless this feeling arose mainly from apprehension that Article XII of the Covenant had been violated. By this the members agree "that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after award by the arbitrators or the report by the Council." Italy argues that reprisals are not war, which alone is to be delayed by this article, and doubtless numerous precedents sustain her.¹¹

The question of violation of the Covenant by Italy is of course wholly distinct from the question of the competence of the League to discuss the dispute between Italy and Greece. This competence would seem to be clear from Article XV, which provides, "If there should arise between members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article XIII, the members of the League agree that they will submit the matter to the Council." The Italians, however, call attention to Article XIII by which "The members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which can not be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration," and assert that Article XV does not become applicable until the resources of diplomacy have been exhausted, which situation they say had not arrived in the dispute with Greece over the Tellini murder.¹²

Doubtless the report of the commission of jurists appointed by the Council, on this point as well as on the right of a country to resort to reprisals when war is prohibited, will serve to clarify the meaning of the Covenant.¹³

¹⁰ London *Times*, Oct. 13, 1923, p. 6.

¹¹ Scialoja, *L'Europe Nouvelle*, 6: 1203.

¹² *Ibid.*

¹³ For questions submitted to the special commission of jurists for report to the December meeting of the Council see, *League of Nations, Journal of the 4th Assembly*, Sept. 29, 1923, p. 231; *League of Nations, Monthly Summary*, 3: 215; *L'Europe Nouvelle*, 6: 1292.

Perhaps a more notable feature of the dispute, however, is the evidence it gave of the practical capacity of the League to preserve peace. The dispute began with the assassination of a representative of a great Power in the territory of a lesser Power; it proceeded by an ultimatum demanding participation by representatives of the great Power in the apprehension and prosecution of the offenders; it reached a crisis through rejection of that ultimatum by the lesser Power and culminated in the invasion and occupation of neutralized territory. In all these respects the case parallels the events of July and August, 1914. Europe was possibly more vividly impressed with the calamities of war in the latter case, but it is perhaps not without importance that in that case an agency existed for assuring a conference of the type which Sir Edward Grey vainly strove to summon in August, 1914. "If the League of Nations had not existed" wrote Lord Robert Cecil, "one would not have been able to show how all the opinion of the world really lay on one side."¹⁴

QUINCY WRIGHT.

INTERPRETATION OF ARTICLE X OF THE COVENANT OF THE LEAGUE OF NATIONS

At the meeting of the Institute of International Law at Brussels in celebration of the fiftieth anniversary of its founding, that illustrious body considered among other matters of importance, the legal interpretation of Article X of the Covenant of the League of Nations.

In the Fourth Assembly of the League of Nations, Article X was considered, and an interpretation sought to be given which would meet with the approval of the countries composing the League of Nations.

The interpretation of this famous article was very similar, indeed, it is said to be identical. M. Rolin, who was present at and acted as Assistant Secretary of the Institute of International Law, was rapporteur of the First Commission, to which the question of interpretation was submitted, and, likewise, rapporteur of the sub-committee formed for its consideration. It was evident, therefore, that he was familiar in all its details with the discussions of both the Institute and the Assembly. However, he did not need to draw upon his recollections as to the actions of the Institute, because the text of that body was communicated officially to the First Committee by His Excellency M. Adatei, Ambassador of Japan, and one of the two rapporteurs of the text in the session of the Institute.

It has been thought advisable to state these details, minute and uninteresting as they may seem in themselves, in order to show the importance of

¹⁴ *L'Europe Nouvelle*, 6: 1201. For opinion of other European statesmen and documents on the settlement of the controversy by the League and the Council of Ambassadors, see *ibid.*, 6: 1201-1207, 1286-1293; *League of Nations, Monthly Summary*, 3: 212-215; *World Peace Foundation*, 6: 169-210.

the interpretation of the League of Nations—a political body—confirming, as it did, the interpretation of the Institute of International Law—a scientific body.

The official English text of Article X is thus worded:

The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

The meaning of this article was the subject of long and profound discussion by the Institute of International Law. Its interpretation was adopted at the meetings of the 9th and 10th of August, and the following is an English translation of the French text:

Resolutions concerning Article 10 of the Covenant of the League of Nations

Adopted at the Sessions of August 9 and 10, 1923

I

By Article 10, the members of the League of Nations obligate themselves collectively and individually with regard to each other:

- (1) to respect the territorial integrity and the existing political independence of all the members of the League;
- (2) to maintain this territorial integrity and this political independence as against all external aggression.

This second obligation implies for every state which is a member of the League, the guarantee that, in case of aggression from another state, the members of the League will lend it assistance with a view to maintaining or reestablishing the *status quo* threatened or destroyed by violence. The legality of the claims which may have been the cause of the aggression is not thereby put into question, and recourse to proper pacific procedure looking to eventual satisfaction remains reserved.

The guarantee of Article 10 applies to the case of an aggression which is a *fait accompli*, and to that of a recourse to war which would not involve violations of engagements undertaken by Articles 12, 13 and 15 of the Covenant. There is thus no conflict with the exercise of the collective sanctions as provided for in Article 16 of the Covenant.

II

The assumption of the guarantee is the execution of a judicial obligation directly arising from the Covenant.

In the present organization of the League the assumption of the guarantee imposes upon the states which are members the duty of applying to the aggressor the two sanctions pronounced as obligatory by Article 16 of the Covenant, *i.e.*

- (1) Severance of trade and financial relations;
- (2) The obligation of permitting passage across their territory to the

forces of all members of the League who participate in a common action to the end that the engagement of the League be respected.

Each of the states which are members remains the judge of the question whether, and in what measure, it is obliged to assure the execution of its duty of guarantee by the employment of the military forces at its disposal.

III

Each state which is a member shall decide concerning the circumstances which effect the obligation of guarantee, but it is for the Council, in virtue of Article 10 of the Covenant, to decide, by a majority vote, whether or not there is occasion for the guarantee to be made effective.

In accordance with Article 15 of the Covenant, neither the vote of the aggressor nor the vote of the victim of the so-called aggression is counted.

IV

In case of aggression, the Council, in accordance with Article 10, should meet at once to draw up a concerted plan of action, and make all necessary recommendations to the members for their specific co-operations in its execution.

The employment of the sanctions mentioned in No. II above may precede the deliberations of the Council.

It should be stated that the vote in favor of the text was twenty, the vote opposed to the text was one; twenty members abstained from voting. If it be borne in mind that a member abstains from voting when he does not wish to declare himself in favor of the text and yet is unwilling to record himself as opposed to it, it is evident that there was great difference of opinion among the members.

Upon the initiative and insistence of Canada, the Assembly of the League of Nations took up the question of Article X under much the same conditions. The Canadian Delegation to the First Assembly suggested that Article X be struck out. In 1921 the Second Assembly refrained from action and referred the matter to the Third Assembly, "in view of the great differences of opinion"—to quote from the *Monthly Summary of the League of Nations*¹—"expressed concerning the scope and significance of this article and its relation with the other articles of the Covenant; as well as the importance of the legal and political arguments invoked both for and against elimination."

At the Third Assembly, meeting in 1922, the Canadian Government withdrew its original suggestion of eliminating the article and proposed in lieu thereof, two amendments. They were communicated to the governments of the countries belonging to the League, with the request for opinions, before the meeting of the Fourth Assembly and, to quote the *Monthly Summary*,² "On the basis of the opinions received, and after exhaustive discussion, the Juridical Committee of the Fourth Assembly proposed a resolution interpreting Article X."

¹ The Fourth Assembly, Vol. III, No. 9, October 15, 1923, p. 198.

² *Ibid.*

The official reports of the League bear out the statement of "exhaustive discussion". The members of the First Committee exchanged their views, and decided to proceed by way of interpretation instead of amendment. They appointed a subcommittee to prepare a text. Of this subcommittee, M. Henri Rolin, of Belgium, was rapporteur, and the text as originally prepared was his. Reported to the First Committee, it was adopted with an amendment proposed by Sir Willoughby Dickinson, representing the British Empire.

There was a strong current of opinion against the interpretative text on the part of states which feared a lessening of the obligation to protect their independence and territorial integrity, of which Article X seemed to be a guarantee. M. Barthélemy, representing France, objected, inasmuch as in his opinion the interpretation modified the obligation. The British amendment apparently removed his scruples, and he voted his country in its favor. The First Committee adopted the text as amended by 26 in favor, to 4 against; and on September 24, 1923, it was laid before the Assembly of the League by M. Henri Rolin, rapporteur. His address is a carefully considered document, giving the origin of the question in its successive stages, and justifying the interpretation which the Committee had approved.

It was to be expected that Canada, as sponsor of the question, would be heard. Sir Lomer Gouin represented Canada on this occasion. He insisted upon the necessity of interpreting Article X, and he voiced his approval of the proposed interpretation. In the course of his remarks he said,

The interpretation given is that of the Amendments Committee and also of the Committee of Jurists. It was also given on August 10th, 1922, by the Institute of International Law at its Brussels meeting, and is, besides, that of the creator of Article 10 himself, ex-President Wilson, as well as of ex-President Taft, Sir Frederick Pollock, M. Oppenheim and M. Larnaude, and every writer, I may say, on the subject of Article 10.³

M. Motta, representing Switzerland, and Chairman of the First Committee, proposed that the question go over, to which Sir Lomer Gouin objected. A vote was therefore taken on the following text:

The Assembly, desirous of defining the scope of the obligations contained in Article 10 of the Covenant so far as regards the points raised by the delegation of Canada, adopts the following resolution:

It is in conformity with the spirit of Article 10 that, in the event of the Council considering it to be its duty to recommend the application of military measures in consequence of an aggression or danger or threat of aggression, the Council shall be bound to take account, more particularly, of the geographical situation and of the special conditions of each state.

It is for the constitutional authorities of each member to decide, in

³ Verbatim Record of the Fourth Assembly of the League of Nations, thirteenth plenary meeting, Tuesday, September 25, 1923, p. 2.

reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces;

The recommendation made by the Council shall be regarded as being of the highest importance, and shall be taken into consideration by all the members of the League with the desire to execute their engagements in good faith.⁴

The President of the Assembly, His Excellency Cosme de la Torriente y Paraza, of Cuba, thereupon addressed the Assembly:

Gentlemen—The following is the result of the ballot:

The following states voted for the interpretative resolution:

Australia, Austria, Belgium, Brazil, British Empire, Bulgaria, Canada, Chile, China, Cuba, Denmark, France, Greece, Hungary, India, Ireland, Italy, Japan, Luxemburg, Netherlands, New Zealand, Norway, Portugal, Salvador, South Africa, Spain, Sweden, Switzerland, Uruguay.

Total 29

The following state voted against the interpretative resolution:

Persia.

The following states were absent or abstained:

Albania, Costa Rica, Czechoslovakia, Esthonia, Finland, Haiti, Latvia, Liberia, Lithuania, Panama, Poland, Siam, Venezuela

Total 13

Total number of votes 43

For the resolution 29

Against the resolution 1

Absent or abstaining 13

A resolution containing an interpretation of an article in the Covenant can only be adopted by a unanimous vote.

As unanimity has not been obtained, I am unable to declare the proposed resolution adopted.

In accordance, however, with a precedent, which arose in a similar case, I shall not declare the motion rejected, because it cannot be argued that, in voting as it has done, the Assembly has pronounced in favor of the converse interpretation.

I accordingly declare the proposal not adopted.

It may nevertheless be advisable that the result of the voting and names of the members who voted should be communicated to the Council, which may regard the result as important.

I propose, then, that the result of the voting on the draft resolution should be communicated to the Council. (*Assent.*)

The purpose of the committee in considering Article X and proposing an interpretation is perhaps best stated by M. Politis, representing Greece, and

⁴ Verbatim Record of the Fourth Assembly of the League of Nations, thirteenth plenary meeting, Tuesday, September 25, 1923, p. 8.

a former Minister of Foreign Affairs of that country. "This interpretation", he said, "has the great advantage of allaying certain apprehensions which have been shown. It has the further advantage of enabling us to hope that it may facilitate the entry into the League of that great Republic of which we are all thinking."⁵

JAMES BROWN SCOTT.

FROM SÈVRES TO LAUSANNE¹

The Treaty of Sèvres of August 20, 1920, was as fragile as the porcelain of that name, though lacking its charm. It was an old fashioned treaty, like that of Versailles, imposing the harsh terms of a relentless victor. Neither treaty revealed much magnanimity or statesmanship. The Turks were able successfully to resist the imposition of the Treaty of Sèvres. The measure of their success may be seen by a comparison of the more important terms of the treaty compared with those of Lausanne signed on July 24, 1923.

In 1920, the Sultan's Government, under the pressure of the Allied Powers in Constantinople, was constrained to accept the Enos-Midia boundary which left to Turkey only so much of European territory as was represented by Constantinople and a small *hinterland* for the protection of the capital. In 1923, the Turks received back approximately their old boundary line with Bulgaria and Western Thrace, which remained with Greece, including the Holy City of Adrianople which holds the tombs of the early Sultans. In 1920 they agreed to surrender Smyrna with a large outlying district to the Greeks, though retaining a fictitious sovereignty subject to extinction by a plebiscite to be held under the auspices of the League of Nations. In 1923 they retained this territory without any restrictions whatever. In 1920 they agreed to an independent Armenia and ultimately to an independent Kurdistan. The Treaty of Lausanne makes no mention of either.

The Treaty of Sèvres provided an absolute guarantee of the freedom of the Straits by leaving Greece in control of the European shore of the Dardanelles, while the Treaty of Lausanne leaves Turkey in complete control from the Aegean Sea to the Black Sea.

The Treaty of Sèvres, though recognizing the inability of Turkey to make "complete reparation" for its responsibility for the World War, imposed the obligation to pay "for all loss or damage suffered by civilian nationals of the Allied Powers in respect of their persons or property through the action or negligence of the Turkish authorities during the war and up to the coming into force of the present treaty." (It will be recalled how this phrase "damage suffered by civilian nationals," was distorted in the case of the Treaty of Versailles to include pensions and separation allowances.) A

⁵ Verbatim Record of the Fourth Assembly, September 25, 1923, p. 5.

¹ See editorial on The Lausanne Conference in April, 1923, issue of this JOURNAL.

financial commission was imposed on Turkey with the most sweeping powers of a national receivership. The Treaty of Lausanne merely provides for the payment by Turkey of its foreign debts due before October 29, 1914, in a manner convenient for Turkish finances, and also for a pro rata distribution of the obligations represented by the revenues of former portions of the Ottoman Empire.

The Treaty of Sèvres reimposed the régime of the Capitulations abolished by the Turks on October 1, 1914, whereby foreigners had acquired so privileged a status as to be contemptuously independent of Turkish jurisdiction and to reduce the sovereignty of the nation to a fiction. It is true the Treaty of Sèvres also provided for a complete revision of this régime, but Turkey was obligated in advance to accept the decisions of the Allied Powers on the subject. The Treaty of Lausanne explicitly provides for "the complete abolition of the Capitulations in Turkey from every point of view," without any safeguards for foreigners in judicial matters other than (1) the agreement of the Turks to employ foreign legal advisers to receive complaints and exercise a sort of platonic surveillance of the administration of justice; (2) the concession that foreigners may settle questions concerning *personal status* according to their own laws and customs in their own national courts; and (3) the agreement to recognize in Turkish courts private agreements in civil matters arrived at by the parties concerned.

In the matter of commercial concessions, the Treaty of Sèvres revived all concessions granted prior to October 29, 1914, including certain doubtful ones which had not been legally validated before the outbreak of the World War, notably the French concession for the construction of the Samsoun-Sivas Railway accorded as a part return for a loan by French financiers early in 1914. The British also had a doubtful claim in a concession of the Turkish Petroleum Company in Mesopotamia and Mosul, as well as another claim to a concession for the construction of quays, docks and arsenals. The Treaty of Lausanne failed to validate all of these foreign concessions, with the exception of those above noted. In these cases the treaty provides for equitable treatment either by permitting the carrying out of the concessions or by indemnization. It should be remembered in this connection, that the Nationalists had already committed themselves in principle to the French concessions by the Treaty of Angora of October 20, 1921. The French delegates at Lausanne endeavored to obtain from the Turkish delegates full recognition of whatever rights had been acquired under that treaty, but were able only to elicit an acknowledgment of their note on the subject.

The Turks at Lausanne stood firmly and consistently on the platform of their National Pact of 1919, which asserted the right of Turkey to a full sovereign status on an equality with all other nations. That they were so successful was due to two facts: first, that the Allied Powers were disunited and mutually distrustful; and second, that the Turks after the landing of Greek troops in Smyrna, in May, 1919, had been aroused to a supreme

national effort. They were willing to fight for their principles and for the last stronghold of the nation in the mountains of Anatolia, while the Allied Powers, on the other hand, were utterly unprepared after the terrific strain of the World War to sacrifice any more lives or treasure. The French had been compelled by serious troubles with the Nationalists in Cilicia and by the revolt of the Arabs in Syria, to make great concessions to the Angora Government. The Italians, wearied by their military adventures in Tripoli, Albania, and Asia Minor, were likewise constrained to make peace with the Nationalists. Great Britain had "bet on the wrong horse" in the tragic struggle between the Greeks and the Nationalists in Asia Minor, and was in no mood for further adventures.

When the Allied Powers, therefore, met the Nationalists at Lausanne, they were at a humiliating disadvantage. The Turks, who had been humiliated many times before and compelled to yield to threats and bluster, now had the delicious satisfaction not merely of resisting the European Powers but ultimately of imposing their own terms. Nor was the old diplomacy of *bazarlik* (bargaining) any longer of avail: there was little left with which to bargain.

In insisting so completely on their sovereign rights, the Turks may have gained more than was good for the nation, inasmuch as neither during the baleful reign of Abdul Hamid nor the disastrous rule of the Young Turks after 1908 had it been possible to train an adequate body of officials to enable Turkey properly to meet all of its international responsibilities and serve effectively its own immediate interests. This may be corrected in part by an enlightened policy of seeking freely the advice of disinterested foreign experts in all branches of public administration.

It is a pleasure to note that, with respect to foreign missions and other philanthropic enterprises established before October 29, 1914, and which on the whole have ministered admirably to the needs of the peoples of the Near East, the Nationalists at Lausanne agreed that they should be treated with the same consideration as similar Turkish institutions, taking into account the peculiar nature and conditions of each.

It is also a pleasure to note that the Nationalists have seen fit to continue the privileges accorded by Mohammed the Conqueror, after the capture of Constantinople in 1453, to the non-Moslem communities to decide questions of *personal status* according to their own usages and customs. As already noted above, this same privilege has likewise been granted to nationals of the Allied Powers.

Following the negotiation of the Treaty of Lausanne, the United States and Turkey signed a treaty of amity and commerce on August 6, 1923, according similar rights as contained in the general treaty. A treaty of extradition was also signed on the same day.

It has been argued that the United States should refuse to ratify any treaty with Turkey that failed to restore the privileges of the régime of the

Capitulations or that ignored the rights of the Armenians to independence. The inference would seem to be that, alone of all the Powers, the United States should be prepared, either to allow an unhappy, unsettled state of affairs to be prolonged indefinitely, or to fight. Either alternative would seem to be utterly inadmissible under actual conditions. There remains no other reasonable alternative than to accept the logic of the situation, and to trust to wise diplomacy and to the disinterested high services of Americans in Turkey to contribute efficaciously to the reconstruction of Turkey. A policy of delaying ratification of the treaty with Turkey, or worse still, of its rejection, would serve only to irritate needlessly the Nationalists and seriously to impede or nullify the efforts being put forth by various laudable agencies, commercial as well as philanthropic, to assist in the tremendous task of the economic, social, moral, and spiritual regeneration of the afflicted peoples of the Near East.

PHILIP MARSHALL BROWN.

INTERNATIONAL COOPERATION AND THE EQUALITY OF STATES

The Cuban Society of International Law, established on the eve of the World War, has held its regular meetings notwithstanding that catastrophe, and appears to be as vigorous as on the day of its birth.

It has the custom of opening its annual session with an address by the Secretary of State for the time being, an officer who, notwithstanding the name, is in fact, Minister of Foreign Affairs. These are brilliant occasions, for the Latin is by temperament and preference an orator.

The Sixth Annual Meeting was held at Habana, on April 23, 1923. The speaker of the occasion was Dr. Carlos Manuel de Céspedes, for many years Cuban Minister to the United States, and the son of Carlos Manuel de Céspedes, leader of the Revolution of 1868, for the independence of Cuba.

The Secretary of State chose for his subject "International Cooperation", and his words were as weighty and as wise as they were eloquent, as is evident even in a translation of the following passages:

The problems which such extraordinary circumstances [following the World War] have brought about are really great and difficult; but events have certainly come to pass during the short period of time since your last meeting, which would seem to justify more and more the belief that the existing difficulties in Europe and in America might be rightly and justly solved, if the Powers would only get together in favor of the most fruitful principle of our science, which is, no doubt, the principle of international cooperation.

His Excellency the Secretary of State felt it necessary not merely to define the expression, but to state the sense in which he proposed to use it, and the conditions under which it could be advantageously employed in the intercourse of nations. On the first point he said,

Let us, then, conclude that international cooperation is the outward shape assumed by the actual good disposition existing between two or more nations in respect to the solution of such problems as may have a common interest for them. It endeavors to find and determines the precepts and rules of equity and justice which are to be laid down as of a general or special character for the solution of situations of fact or of law; and whenever diplomatic resources are exhausted in respect to the assertion or establishment of what is right, it provides the instrumentalities or the means which may be deemed necessary for stating what the law is and its acceptance. If the last resort to which any state or people may appeal is still, unfortunately, war, international cooperation in all the relations existing among them can and must be resorted to in order to avoid it.

As to the conditions under which alone it can be serviceable, the distinguished speaker said,

But international cooperation, such as I understand it, can yield all its beneficial results only among such entities as stand on a footing of equality to each other. The principle of equality among nations is what constitutes the fundamental bases of international cooperation. That equality is in its turn founded upon a mutual respect, no matter how the military force or the territorial or economic importance of the nations may differ.

Without this, which may be called a condition precedent, any cooperation between the weak and the strong, results, in the end, in the more or less complete imposition of the will of the latter upon the former; and since only such countries, whether large or small, as fulfill their international obligations and enjoy a certain prestige owing to the stability of their institutions, truly deserve and even compel the respect of others, it is quite plain that even in the most favorable cases, there is not in truth any possibility of a real international cooperation among nations unless they are considered as equal through the mutual good opinion which they may have for each other within the great family of civilized nations. For that reason it is always in the self-interest of a nation to raise itself higher and higher in the opinion of foreign nations through the practice of civic virtues and the maintenance of liberty, justice and order, all of which are indeed indispensable to the happiness of any people and the good international reputation of their government.

In the same year of 1923, but a few months later—to be specific on November 30th—the Honorable Charles Evans Hughes, Secretary of State—that is to say, Minister of Foreign Affairs—of the United States, had occasion to deliver an address before the American Academy of Political and Social Science, in Philadelphia, on the Centenary of the Monroe Doctrine. It is not, of course, to be taken as a reply to his distinguished colleague of Cuba, but it shows how the American mind conceives international problems, and the basis upon which cooperation among the Americas is possible, for in this case, Secretary Hughes was not speaking of European affairs, but of the principles upon which the cooperation of the American Republics should be based—at least he stated those principles as far as the United States are

concerned, in whose behalf he is, by virtue of his office, authorized to speak. In its outlook upon the American continent, and the relations which should exist between the American Republics, America is one, if the views of Mr. Hughes, representing the North, and Dr. Céspedes, representing Latin America, are to be accepted. In clear, precise and unmistakable terms, the American Secretary of State explained the policy of his country,

First.—We recognize the equality of the American Republics, their equal rights under the law of nations. Said Chief Justice Marshall: "No principle of general law is more universally acknowledged than the perfect equality of nations. * * * It results from this equality that no one can rightfully impose a rule upon another."

At the first session of the American Institute of International Law, held in Washington in the early part of 1916, the jurists representing the American Republics adopted a declaration of the rights and duties of nations. This declaration stated these rights and duties "not in terms of philosophy or of ethics but in terms of law," supported by decisions of the Supreme Court of the United States. The declaration set forth the following principles:

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

It can not be doubted that this declaration embodies the fundamental principles of the policy of the United States in relation to the Republics of Latin America.

It is impossible to overstate the importance of Secretary Hughes' address, for it appears to be the first time that a Secretary of State, speaking under a restraining sense of official responsibility, has declared that the policy of the United States is not a thing of philosophy or of ethics, but that it is based upon distinct and concrete principles of law, which he states as having the approval of the Supreme Court of the United States.

In embarking upon American relations we are not setting forth upon uncharted seas; and the compass is before the eyes of him who steers the Ship of State.

JAMES BROWN SCOTT.

CUBA AND THE UNITED STATES: EXCHANGE OF AMBASSADORS AND OF VIEWS

The United States and Cuba decided, in the course of the present year, to raise their legations to the rank of embassies. The United States accredited as its first Ambassador to Cuba, Major General Enoch H. Crowder; Cuba has more recently appointed Dr. Cosme de la Torriente as its Ambassador.

Under ordinary conditions an ambassador comes, an ambassador goes. He presents his credentials and makes an address. His credentials are received and an address is made in reply by the chief executive. In all this change there is, however, a constant element, the state, and if it could speak in its own behalf, it might well use the words which Tennyson has attributed to the brook: "For men may come and men may go, but I go on forever."

The state speaks through its agent and each agent of the state on this occasion took advantage of the change from legation to embassy to express the policy of his country. The American Ambassador and the President of the United States outlined the policy of their country to Cuba: the Cuban Ambassador and the President of Cuba sought to define the policy of their country to the United States. Therefore, the addresses delivered on this occasion have an importance which they would not otherwise possess, for they state the interests of the two neighboring republics and define the policies which they would pursue.

General Crowder has had a long and distinguished career in the Army of the United States. It was he, who, many years ago, captured Sitting Bull. More recently he was Provost Marshal General during the war with Germany, and through his initiative, skill, and relentless energy, the large army for service in the World War was admirably and promptly recruited. During the Spanish American War he served in the Philippines, rising to the rank of Brigadier General of Volunteers. During the intervention in Cuba during President Roosevelt's administration, he was Secretary of State and Justice (1906-1908) and was responsible for the series of laws which were enacted in order to prevent a recurrence of conditions which might lead the United States to intervene in the future. Quite recently, he was sent to Cuba as the personal representative of President Wilson and was continued as such by his successor, President Harding.

To General Crowder's initiative and knowledge of Cuban laws and local conditions are due the adjustment of the presidential difficulty which troubled that sorely tried little island.

General Crowder was formally received by Alfredo Zayas, President of the Republic of Cuba, on March 5, 1923. The address which the Ambassador delivered on that occasion in presenting his credentials, is one of those rare documents which says all that is to be said, and leaves little or nothing to be added even in the way of comment. This is what the Ambassador said:

The relations of our respective countries have a high significance. They are not only members of the great confraternity of enlightened nations of the world, but are sister republics of America, with the same ideals of liberty, and of traditions of justice to all. The bonds of affection and respect which unite our countries are strengthened by the fact that both have been, not only neighbors in peace, but also brothers in arms in two great conflicts, each having for its righteous aim similar and related ends. Bonds of mutual interest and friendship, born of such associations, are well nigh indissoluble.

I need not say, Mr. President, that I esteem as a very great honor the elevation of my representation here from Special Representative of the President of the United States to Ambassador Extraordinary and Plenipotentiary of the President and of the nation, but my appreciation of that honor lies principally in the opportunity it affords me for service to both countries. I have additional satisfaction in the fact that my entrance upon my duties as diplomatic representative of my Government in Cuba occurs at a time when the policy of open diplomacy and frank cooperation among nations, to the exclusion of ulterior purpose, has become so generally recognized as to constitute a rule of conduct for me near your Government. Under such conditions we may look forward to complete success in the realization of the very strong desire of my Government that all those great transformations which have been undertaken under Your Excellency's administration for the welfare of the Republic of Cuba will be continued and completed in a definite way.

Presentation addresses are usually formal documents. Were it not beneath the dignity of diplomacy, they might be called "cut and dried". General Crowder's was dignified and full of feeling. The reply of President Zayas is equally dignified and full of feeling, with more than a suggestion of the equality upon which diplomatic relations must be based. On these occasions the ambassador or minister usually speaks in his own language; Americans are required to use English, or as our Revolutionary forefathers preferred to call it—the language of the United States. President Zayas naturally replied in Spanish as the language of Cuba. Each actor on the international stage furnishes the other with a copy of the address in the language of the original and in translation, and, faithfully reproduced in the official English translation, this is what President Zayas said:

The reference which you have so wisely made of the lofty significance which the relations between our respective countries have, fills me with satisfaction, because not only do you remind us that both are members of the great confraternity of civilized nations, but that they

maintain the same great ideals of liberty and of justice toward all, they being sister republics of America.

During days as glorious as they were decisive we maintained together the supreme ideal of the Cuban people of being free and independent, in order to constitute a republican government in Cuba founded upon democratic principles; and united by common sentiments we were later joined in a double enterprise, in favor of the good of humanity.

These are memorable events which have naturally originated growing ties of friendship and which had as a precedent and solid foundation the unforgettable and noble joint resolution of your honorable Congress of April 19, 1898 in which it was declared that the people of the Island of Cuba are, and of right should be free and independent, and that the United States deny having any desire to exercise jurisdiction or sovereignty, nor to intervene in the Government of Cuba unless it be to pacify it, and affirmed their intention of leaving the dominion and government of the Island to its people, once its intention was realized. Such beautiful statements have engraved an indelible sentiment of gratitude in our hearts.

Cuba has made an exchange in kind. Dr. Torriente has had an excellent military career, and has for years past been prominent in the domestic and foreign service of his country. In the days of American neutrality toward Spain, Dr. Torriente, then a young man, visited the United States in behalf of the Cuban Junta. His purpose was to fit out what is called filibustering expeditions against Spanish authority in Cuba. His actions brought him into conflict with the neutrality laws of the United States. On one occasion he was defended by no less a person than the Honorable George Gray, then United States Senator from Delaware, and later a Circuit Judge of the United States. On more than one occasion Mr. Torriente inspected American prisons from the inside, because of his patriotic activities. Later, he had an occasion to inspect British prisons in the West Indies for the same cause. But when the United States declared war against Spain, Mr. Torriente was able to exchange filibustering for active soldiering in the field. He landed in Cuba, serving with one army after another, reaching the rank of Colonel, and Chief of Staff of an Army Corps. After the independence of his country was secured, he had the honor to represent Cuba in Spain and to sign the first treaty between the mother country and its rebellious offspring. Later he was Secretary of State in the Cabinet of President Menocal; still later a Senator of Cuba and Chairman of the Committee on Foreign Affairs of the Senate; more recently, a representative of Cuba in the Assembly of the League of Nations, of which in the present year he had the great honor to be president.

From Geneva, he came to Washington, where, on the 13th of December, 1923, he was officially received by the President of the United States. On that occasion he delivered an address full of good will to the United States, expressing his gratitude for the intervention of the United States, which procured the liberty of his country, assuring the President that all who

participated in the great and trying movement are truly grateful to the United States, and that the present generation is likewise inspired by a spirit of gratitude.

But why continue a summary?—His address states his views and the views of his country!

In entering upon the duties of my office by addressing Your Excellency in the name of the President of Cuba and, therefore, of my nation, I cannot but recall the days, which are already somewhat distant, during which the Cubans struggled bravely to obtain their independence and the great American people, whose President was then the eminent statesman William McKinley, accepted with enthusiasm the declarations of the memorable joint resolution of April 20, 1898, in which the Congress recognized and affirmed, then and for all time, the principle for which the heroic soldiers of Maximo Gomez, Antonio Maceo and Calixto Garcia were giving up their lives.

As a member of the glorious legion which, under the command of Calixto Garcia joined the American Army led by General Shafter which had disembarked and laid siege to the city of Santiago de Cuba, I had the honor of fighting alongside of the generous foreigners who were offering their lives or shedding their blood to achieve that which their country had promised the world: the independence of Cuba. Till then I had entertained, in common with all soldiers of Cuba, a great admiration and sympathy for the United States of America; at that time, to those sentiments there was added the most profound gratitude, such as is natural that every heart should feel when a great good has been received. And what other benefit could exceed the powerful and decisive aid rendered us in obtaining our sacred and much longed for independence, for which, during the greater part of the past century, thousands of Cubans perished in exile, in prisons, on the scaffold and on the battlefields? These sentiments are today those of all Cubans who were men at the time of the establishment of the republic, they are at the same time the sentiments of all the younger generation, which since then has grown up cherishing great devotion to their country, and it is those sentiments which make the mission which I now undertake an especially grateful one, since I am among those who consider that there can be no really fruitful diplomatic action which is not based on sympathy and appreciation for the nation to which one is accredited.

But I would not be loyal if, in speaking to Your Excellency, in the name of the President of Cuba, I did not recognize that, at times, as Your Excellency well knows, in the daily relations between the Governments of Washington and Havana, differences in judgment have arisen, which in the long run might have produced sentiments distinct from those which should prevail between two peoples so closely united by their geographical situation, by history, in which there are pages common to both of them, and by great material interests of all sorts, had it not been that the statesmen of the two countries have on all occasions endeavored to prevent, or to do away with, difficulties of every kind, yielding at times somewhat in their opinions and even in what they considered to be their rights in accordance with their interpretation of the convention which permanently regulates our mutual relations.

The Cubans passed from the condition of a colony, to a Republic, as

did all the other peoples of our race in America, when popular education had not yet attained the degree of perfection necessary for the best exercise of the rights which the constitution of every democratic state grants to its citizens. In order to reach that degree of perfection in the functioning of her institutions, of which the majority of her sister nations of America are today a model, the Republic of Cuba, although we recognize that she began her independent existence at a more advanced period of civilization—three quarters of a century after the former—has had and will still have to struggle against difficulties of every kind, as for a long term of years other peoples who did not suffer the evils of which Cuba has been the victim have been compelled to do, until by degrees she shall rid herself of them, as she has gradually been doing. When these evils are recalled and set forth one by one by her critics, if the latter are shown, in contrast to those evils, the virtues, the achievements and the progress of the Cuban people, they will surely be confounded and, if they act in good faith, they can be brought to recognize their error.

Fortunately, Mr. President, up to the present time, in the course of our independent existence, Your Excellency's predecessors, as also Your Excellency, have never forgotten the rôle which the United States assumed with respect to Cuba, since the famous joint resolution of 1898 was voted, and thus it has been that your cooperation, whenever we have needed it, has ever been loyal and sincere. Nor have the Presidents of the United States failed to recognize the fact that in order that Cuba might continue to maintain its position as a sovereign and independent people in the consort of the free nations of the world, nothing should be done to injure its international personality; as otherwise the cooperation which Cuba can lend in the furtherance of the great ends which all America is called upon to realize, would greatly suffer, for not in vain has God placed Cuba at a point in the world at which the great routes of communication cross each other and is, for this reason, destined, at a future not far distant, to serve as a bond of union between diverse races and civilizations, as is evidenced by the fact that Havana should have been chosen unanimously by the nations of this continent as the seat of the Sixth Pan American Conference.

Your eminent Secretary of State, Mr. President, speaking a few days ago before the American Academy of Political and Social Science at Philadelphia, declared his conformity with the declarations made by the American Institute of International Law at its first session held in Washington in 1916, which is as though Your Excellency himself had so affirmed, among which are the following: that "every nation has the right to exist, and to protect and to conserve its existence"; that "every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states"; and that "every nation is in law and before law the equal of every other nation belonging to the society of nations". These declarations of the famous Institute, in voting which the highest juridical authority of Cuba took part, are the ruling principles in the international policy of the Government of President Zayas, and to second him in its development he has sent me here, confident that Your Excellency will lend Cuba, as up to now has been done, the friendly advice and aid of which Your Excellency's

Secretary of State spoke in the address to which I have alluded above, thus making my mission extremely easy.

The reply of President Coolidge is graciousness itself. Expressing the satisfaction which would naturally be pleasing to the Chief Executive of the United States at the mention of its services to Cuba, he stated in short but measured language the desire of the American people "to see that independence safeguarded and Cuban prosperity assured". But, as in the case of the Ambassador, the President should speak for himself:

I value highly the appreciation which you so cordially express of the assistance rendered by the United States to Cuba during the latter's struggle for independence. It is the desire of our people to see that independence safeguarded and Cuban prosperity assured.

It is true, as you state, that differences of opinion have arisen regarding the position which the United States occupies with respect to Cuba. But I am sure that as regards the fundamental aspects of this position, our statesmen are in accord.

In your remarks, you have referred to the time when you served with forces of this country for the realization of a common ideal. It is gratifying indeed that you are to cooperate with us now in the furtherance of our common desire for better understanding and mutual aid. You can count upon the ready support of this government in your efforts to that end.

I have not failed to note the hope expressed by you, on behalf of His Excellency President Zayas, that the friendly advice which has been given to him from time to time by this government be continued. I take this opportunity to assure you that this government, as ever, entertains the highest solicitude for the welfare of Cuba. It will gladly continue to be of service by means of the friendly counsel and advice which has invariably been given with a view to assisting the Cuban people to maintain an independent existence and to discharge their international obligations.

It will not escape notice that Secretary Hughes' address on the centenary of the Monroe Doctrine (a portion of which is quoted in another editorial comment in this number) has already made its way to the Latin American countries, and that His Excellency the Cuban Ambassador, in his first official appearance in the United States laid great stress upon this statement of Secretary Hughes. Apparently, the two governments are in complete accord upon the principle of equality, and upon the extent to which this principle must obtain in international relations—at least in the relation between the American republics, if they are to be considered international. In reality, they are American, based upon the common principles of justice, mutual respect, and a desire to contribute to each other's advancement.

That General Crowder's tenure of office as Ambassador to Cuba may meet with the approval of the Cuban people, and that Mr. Torriente's tenure of office may meet with the approval of the United States is assuredly the desire of the friends of these free, sovereign and independent republics.

JAMES BROWN SCOTT.

CURRENT NOTES

SUPREME COURT DECISIONS IN ALIEN LAND LAW CASES

On November 12, 1923, the Supreme Court of the United States handed down the following decisions, *Terrace et al. v. Thompson*; *Porterfield and Mizuno v. Webb and Woolwine*; and on the 19th of the same month, *U. S. Webb, as Attorney General of California, and C. C. Coolidge, as District Attorney of Santa Clara County, Appellants, v. J. J. O'Brien and J. Inouye*; and *Raymond L. Frick and N. Satow, Appellants, v. U. S. Webb, as Attorney General of California, and Matthew Brade, as District Attorney of the City and County of San Francisco*.

The leading case, or rather the one in which Mr. Justice Butler, speaking for the court, delivered a carefully reasoned and elaborate opinion, decided the four; each was on appeal before the Supreme Court from a District Court of the United States. The Terrace case arose under the Constitution and the laws of the State of Washington, the other cases under the laws of California. These four cases, as decided in the District Courts, were the subject of an editorial comment in the *Journal* for July, 1922 (pp. 420-423). The facts in each are similar. Japanese sought to lease agricultural land and to carry on the business of farming. The laws of Washington and California forbade this. The appellants contended that they were entitled to the right under the treaty with Japan, and that the laws of the States were unconstitutional for a variety of reasons. The Supreme Court declared that the laws were not unconstitutional. It also decided that Article I of the Treaty of 1911 with Japan only gave, so far as the present case was concerned, "the right to 'carry on trade' or 'to own or lease and occupy houses, manufactories, warehouses and ships', or 'to lease land for residential and commercial purposes' " and that this clause did not convey the right to lease for agricultural purposes. Mr. Justice Butler also showed that, according to the desire of Japan, this right was struck from a proposed draft of the treaty, in which Japanese subjects were to have the right "to lease land for residential, commercial, industrial, manufacturing and other lawful purposes."

In view of the fact that the four cases have been discussed in the editorial comment referred to, and that the Terrace case of Washington, and the Porterfield case of California, will be printed in an early number of the *JOURNAL*, it does not seem to be necessary to consider them in detail.

APPOINTMENT OF DELEGATES TO THE INTERNATIONAL COMMISSION OF JURISTS¹

Three governments have communicated to the Pan American Union the names of their representatives on the International Commission of Jurists, in accordance with the provisions of a resolution adopted by the Fifth International Conference of American States, held at Santiago, Chile, in March and April last. The Government of Guatemala has named Sr. Lic. don Antonio Batres and Sr. Dr. don José Matos; the delegates of Panama are Sr. Dr. Eusebio A. Morales and Sr. Dr. Horacio F. Alfaro, while the United States will be represented on the Commission by Dr. James Brown Scott and Prof. Jesse S. Reeves. All are prominent in the affairs of their respective countries, and have held positions of trust and responsibility.

Dr. Batres and Dr. Matos were the two Guatemalan delegates to the International Commission of Jurists which met in 1912. Dr. Batres was also the Guatemalan delegate to the Third International Conference of American States, has served as Minister at Washington, and has occupied the posts of Minister of Foreign Relations, of Public Instruction, and of Government. Dr. Matos has served as Secretary of the Guatemalan Legations at Madrid and Mexico City, as Sub-Secretary of Foreign Relations, and was a delegate to the Second Pan American Scientific Congress.

Dr. Eusebio A. Morales has served his country in many important capacities, including that of Minister to the United States, and during the administration of President Valdes served as Secretary of Government and Justice. Dr. Alfaro, a graduate of the University of Cartagena, served for some years as a member of the judiciary. In 1907 he was sent on a special diplomatic mission to Colombia, and in 1908 became Secretary of Foreign Affairs of Panama.

Of the two United States delegates, Dr. Scott, as President of the American Institute of International Law and Secretary of the Carnegie Endowment for International Peace, has long been prominent in the field of international affairs. He was a delegate to the Second Hague Conference in 1907, a technical delegate to the Paris Peace Conference in 1919, and served as legal adviser to the Conference on Limitation of Armament, held at Washington in 1921. Prof. Reeves is Professor of Political Science at the University of Michigan, Associate Editor of the "American Journal of International Law," as well as a member of the Society, and is also a member of the American Political Science Association.

The commission, which is to meet at Rio de Janeiro in 1925, on the date to be determined by the Governing Board of the Pan American Union in agreement with the Government of Brazil, was originally created by the Third International Conference of American States, which adopted a convention providing for an International Commission of Jurists to prepare a draft of a code of private international law and one of public international law. The commission met at Rio de Janeiro from June 26 to July 12, 1912. Although the convention called for one delegate from each country, the

¹ Press notice of the Pan-American Union, November 15, 1923.

Governing Board of the Pan American Union in fixing the date of meeting, provided for the appointment of two delegates from each country, each delegation, however, having but a single vote. The following countries, sixteen in all, sent official delegations: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Salvador, United States, Uruguay, and Venezuela.

Six distinct committees were organized at the first meeting of the commission to meet in different capitals of the American republics, to consider the following phases of international law: (1) Maritime war and the rights and duties of neutrals; (2) War on land, civil war and claims of foreigners growing out of such wars; (3) International law in time of peace; (4) Pacific settlement of international disputes and the organization of international tribunals; (5) Status of aliens, domestic relations and successions; (6) Matters of private international law not embraced in the previous enumeration, and including the conflict of penal laws.

Two committees were then appointed to report at once upon a tentative draft of two conventions covering extradition and the execution of foreign judgments. The committee on the convention on extradition made a full report, which was discussed and, in slightly amended form, approved by the Congress. No action, however, has been taken thereon by any of the governments represented at the conference. In considering the convention on the execution of foreign judgments, it was decided to refer the question to one of the special committees.

The commission then adjourned to meet again in 1914, but owing to the outbreak of the European War this meeting never took place. Of the special committees appointed only that named to consider the status of aliens, domestic relations and successions held a meeting, but as the commission itself failed to meet in 1914, it was impossible for this committee to present its report.

With the object of continuing the work started in 1912, the Fifth International Conference of American States adopted a resolution reorganizing the commission, and requesting each government of the American republics to appoint thereon two delegates. In addition to the program mapped out in 1912, the commission has been entrusted by the Santiago Conference with a number of additional functions, among them consideration of the status of children of foreigners born within the jurisdiction of any of the American republics; the rights of aliens resident within the jurisdiction of any of these republics; and the study of the project submitted by the Costa Rican delegation to the Fifth International Conference of American States for the creation of a Permanent American Court of Justice. The resolutions of the commission will be submitted to the Sixth International Conference of American States, to meet at Havana, Cuba, in order that, if approved, they may be communicated to the respective governments and incorporated in conventions.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD AUGUST 15–NOVEMBER 15, 1923

(With reference to earlier events not previously noted.)

WITH REFERENCES

Abbreviations; *Adv. of peace*, Advocate of peace; *B. I. I.*, Bulletin de l'Institut Intermediaire International; *Bd. of trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cur. Hist.*, Current History (New York Times); *D. O.*, Diario oficial (Brazil); *E. G.*, Eidgenoecheiss gesetzsammlung (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El. Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal Officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. Q. B.*, League of Nations, Quarterly Bulletin; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetzblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *R. R.*, American Review of Reviews; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

May, 1923

- 12 EGYPT—PERSIA. Provisional commercial agreement concluded by exchange of notes. *Commerce reports*, Nov. 5, 1923, p. 385.

June, 1923

- 28 BELGIUM—DENMARK. Agreement concerning aerial navigation signed at Copenhagen. *Monit.*, Oct. 21, 1923, p. 5145.
- 29 BELGIUM—LUXEMBURG. Concluded special convention in execution of Article 22 of the Madrid Postal Convention of Nov. 30, 1920 and Article 13 of the Arrangement concerning registered mail. Text: *Monit.*, Sept. 1, 1923, p. 4343.

July, 1923

- 17 to Oct. 7 TANGIER CONFERENCE. Conference of experts representing Great Britain, France and Spain adjourned on July 17, and resumed sessions on Aug. 22. On Oct. 7 negotiations were suspended. *Cur. Hist.*, Nov. 1923, 19: 332. Session which was to have been held in Paris, Oct. 22, adjourned, following demand of Italy for

July, 1923

- admission by her delegates. On Oct. 23, the U. S. State Department published text of note to British, French and Spanish governments reiterating its request for maintenance of principle of open door in Tangier settlement. Date for reassembling of conference fixed for Oct. 27. *Cur. Hist.*, Dec. 1923, 19: 504.
- 21 AUSTRIA—PORTUGAL. Commercial treaty signed, effective Aug. 1, 1923. *D. G.*, July 31, 1923. *Commerce reports*, Oct. 1, 1923, p. 55.
- 23 POLAND—TURKEY. Treaties signed at Lausanne: (1) Commercial agreement, containing "most-favored-nation" clause; (2) Agreement covering settlement of citizens of one country in territory of the other, by which equality of rights is guaranteed; (3) Treaty of friendship. *Commerce reports*, Oct. 1, 1923, p. 55.
- 24 FRANCE—GREAT BRITAIN. Notes exchanged between British and French delegates at Lausanne regarding concessions in territories detached from Turkey and Article 34 of Treaty of Lausanne of July 24, 1923 (Egyptian nationality). *G. B. Treaty series*, no. 17-18 (1923). Cmd. 1946-1947.
- 24 POLAND—TURKEY. Subsidiary treaty signed at Lausanne. *Cur. Hist.*, Dec. 1923, 19: 88.
- 27 PAN AMERICAN COMMISSION OF CHILE. Organized by Presidential decree, in conformity with provisions of Article IV of resolutions concerning the Pan American Union, approved by the Fifth International Conference of American states. Text: *P. A. U.*, Dec. 1923, p. 550.

August, 1923

- 4 AFGHANISTAN—GREAT BRITAIN. Ratifications exchanged at London of trade convention of June 5, 1923. *G. B. Treaty series*, no. 21 (1923). Cmd. 1977.
- 8 to Sept. 21 FUME QUESTION. Premier Mussolini of Italy on Aug. 8 informed Yugoslav delegation of the Mixed Commission in Rome that Italy would consider herself free to resume full liberty of action unless agreement was reached by Aug. 31. *N. Y. Times*, Aug. 25, 1923, p. 3. On Aug. 31, Mixed Commission reached agreement whereby Fiume should be administered by Mixed Commission, on which Italy, Yugoslavia and Free State of Fiume should be represented. *N. Y. Times*, Sept. 8, 1923, p. 3. On Sept. 12 and 15 the Treaty of Rapallo of 1920 and the Agreement of Santa Margharita of 1922 were filed with the League of Nations by Yugoslavia and Italy. *N. Y. Times*, Sept. 16, 1923, p. 4. On Sept. 16, the Fiume government resigned and General Giardino of

August, 1923

- Italian army was appointed Military Governor. *N. Y. Times*, Sept. 17, 1923, p. 1. On Sept. 21, Yugoslav government replied to latest Italian proposal providing for annexation by Italy of Italian part of Fiume and by Yugoslavia of the Slav section and for running the governments of Fiume and Porto Barras as a single entity, under Mixed Commission. *N. Y. Times*, Sept. 22, 1923, p. 4.
- 14 BELGIAN LUXEMBURG ECONOMIC UNION—POLAND. Commercial treaty of Dec. 30, 1922 ordered promulgated in Belgium. *Monit.*, Oct. 4, 1923, p. 4894.
- 14 GREAT BRITAIN—ITALY. Arbitration agreement of Feb. 1, 1904 renewed for five years by exchange of notes. Text: *G. B. Treaty series*, no. 22, 1923. Cmd. 1878.
- 15-17 INTERNATIONAL MARITIME CONFERENCE. Held at Gothenburg with nine countries represented. Text of resolutions: *L. N. Q. B.*, Oct. 1923, p. 192.
- 15-18 INTERPARLIAMENTARY UNION. Twenty-first conference held in Copenhagen. *Bul. interparl.*, July-Aug. 1923. *Cur. Hist.*, Oct. 1923, 19: 158.
- 16 RIGA CONFERENCE. Esthonia, Latvia and Finland concluded conference on cooperation in matters affecting extradition of criminals, passport regulations, policy toward Soviet Russia, etc. *Cur. Hist.*, Oct. 1923, 19: 159.
- 17 CZECHOSLOVAKIA—FRANCE. Commercial treaty signed at Paris. *Ga. de Prague*, Aug. 22, 1923, p. 3. Text: *J. O.*, Aug. 31, 1923, p. 8518.
- 17 to Nov. 12 PERMANENT COURT OF INTERNATIONAL JUSTICE. On Aug. 17, rendered judgment in *S. S. Wimbledon* case to the effect that Germany was at fault in closing Kiel Canal. *L. N. M. S.*, Sept. 1923, p. 163. On Sept. 10, delivered advisory opinion in favor of Germany on question concerning rights of German settlers in Poland. On Sept. 15, gave advisory opinion on question regarding interpretation of Article 4 of Polish minorities treaty, declaring competence of League of Nations to deal with the question. *L. N. M. S.*, Oct. 1923, pp. 190-192. *Cur. Hist.*, Oct. 1923, 19: 150. On Nov. 12, the court met in extraordinary session to discuss delimitation of frontier between Poland and Czechoslovakia. *N. Y. Times*, Nov. 18, 1923, p. 2. *L. N. M. S.*, Nov. 1923, p. 243.
- 20 to Oct. 23 GERMAN REPARATIONS. Reply of France of Aug. 20 to British note of Aug. 11 published as Yellow Book on Aug. 22. Text: *N. Y. Times*, Aug. 23, 1923, p. 1. *Europe*, Sept. 1, 1923,

August, 1923

p. 1104. *Cur. Hist.*, Oct. 1923, 19: 61. Belgian reply delivered to British ambassador on Aug. 27. Text: *Times*, Aug. 29, 1923, p. 6. *Europe*, Sept. 1, 1923, p. 1121. On Sept. 26, President Ebert of Germany issued formal proclamation announcing end of passive resistance in the Ruhr. Text: *N. Y. Times*, Sept. 27, 1923, p. 2. *Nation* (N. Y.), Nov. 14, 1923, p. 565. On Oct. 12, German government announced that payments to Ruhr unemployed would be discontinued after Nov. 17. Agreement reached between miners' unions and French authorities for resumption of work at certain mines. The German government, on Oct. 16, renewed its request for cooperation of France, Belgium and Germany in restoration of industrial operations in Ruhr, but Poincaré rejected it. *Cur. Hist.*, Dec. 1923, 19: 360. *N. Y. Times*, Oct. 18, 1923, p. 1. New German note sent to Reparation Commission on Oct. 23, declaring inability to make deliveries in kind and asking examination of Germany's capacity to pay. Text: *N. Y. Times*, Oct. 25, 1923, p. 3. *Cur. Hist.*, Dec. 1923, 19: 367.

- 22 GREAT BRITAIN—SOVIET RUSSIA. Chicherin sent note to British agent in Moscow in protest against raising of British flag on the Isle of Wrangel as violation of Russian sovereign rights. *Russian information*, Sept. 1, 1923, p. 131.

PORTUGAL. Commercial treaty signed, replacing [illegible] by Portugal on April 1. *Com-*
[illegible] relations: *Staatscourant*,

August, 1923

- 26 DENMARK—LITHUANIA. Temporary agreement regulating commercial and shipping relations on basis of most-favored-nation treatment, arranged by exchange of notes. *Commerce reports*, Oct. 29, 1923, p. 313.
- 27 to Sept. 29 GREECE—ITALY. On Aug. 27, General Tellini of Italy, president of the International Delimitation Commission, and four members of his suite, were murdered near Japina. Italy issued ultimatum to Greece on Aug. 29, part of which Greece accepted on Aug. 30, but rejected indemnity demand. Council of Ambassadors ordered Greece to investigate crime. On Aug. 31, Italian fleet bombarded Corfu and occupied the island. Italy made new demands and sent communication to the Powers. On Sept. 1 Greece appealed to League of Nations under Article 15, of the Covenant. Italy denied League's right to interfere. League Council discussed the matter and exchanged views with Conference of Ambassadors. On Sept. 7, Ambassadors sent note to Greece embodying nearly same terms as Italy's original demands. Terms accepted by Greece, without reservation. Italy also accepted terms and agreed to evacuate Corfu and other islands when Greece had satisfied Italy's demands for reparations. *Cur. Hist.*, Oct. 1923, 19:148. Communiqués issued by Ambassadors' Council Sept. 9 and 26. Texts: *Times*, Sept. 10 and 27, 1923. On Sept. 27, Corfu was evacuated. On Sept. 28, Swiss National Conference instructed Swiss National Council to demand Italy's compliance with League of Nations. Italy. *Cur. Hist.*, Oct. 1923, 19:148.

September, 1923 .

2 POLAND—SOVIET RUSSIA. Poland sent note to Soviet government stating her readiness to recognize Soviet Federation provided all republics in the Union would observe conditions guaranteed by Riga treaty. *Cur. Hist.*, Oct. 1923, 19: 171.

3-29 LEAGUE OF NATIONS ASSEMBLY. Fourth session held at Geneva, with forty-seven states (members) represented at the outset and two new members, Irish Free State and Abyssinia admitted in course of session. Elected M. Pessoa judge of Permanent Court of International Justice to succeed Judge Barbosa. Decided to ask Council to communicate draft treaty of mutual assistance to all governments for their opinion. Elected six non-permanent members of the Council (Uruguay, Brazil, Belgium, Sweden, Czechoslovakia, Spain). Draft amendment to Art. 10, submitted by Canadian government at first meeting not adopted, one member, Peru, abstaining from voting. Council decided to recommend mutual assistance.

L. N.

September, 1923

- 8 FRANCE—NETHERLANDS. Aerial navigation arrangement signed at Paris, July 2, 1923, of which ratifications were exchanged on Sept. 3, promulgated in France. *J. O.*, Sept. 11, 1923, p. 8920.
- 8 FRANCE—POLAND. Treaty concerning property rights and interests, signed Feb. 6, 1922, of which ratifications were exchanged on Aug. 2, promulgated in France. Text: *J. O.*, Sept. 11, 1923, p. 8918.
- 8 INTERNATIONAL POLICE CONGRESS. Closed at Vienna, after agreeing to establish an international criminal police commission in Vienna as preliminary to creation of an international police bureau in principal countries of the world. *Wash. Post*, Sept. 9, 1923, p. 6.
- 8 IRISH FREE STATE. Admitted to League of Nations. *Wash. Post*, Sept. 9, 1923, p. 19. *N. Y. Times*, Sept. 11, 1923, p. 19. *L. N. M. S.*, Q.
- 8 MEXICO. Commission for settlement of all claims of the claims

September, 1923.

- 28 ETHIOPIA (ABYSSINIA). Admitted to League of Nations. *L. N. M. S.*, Oct. 1923, p. 196.
- 29 FRANCE—GREAT BRITAIN. Declaration signed at Paris concerning oyster fisheries outside territorial waters. Text: *J. O.*, Sept. 30, 1923, p. 9506. *G. B. Treaty series*, no. 31 (1923). Cmd. 1996.

October, 1923

- 1 IMPERIAL CONFERENCE. British imperial conference opened in London on Oct. 1 and Imperial economic conference on Oct. 2. *Cur. Hist.*, Nov. 1923, 19: 320. *Times*, Oct. 2-3, 1923, p. 12. Official summary: *Times*, Nov. 12, 1923. Cmd. 1987.

on basis of most favored-

October, 1923

- 10 PEASANT CONFERENCE. First International Peasant Conference, with object of creating world-wide peasant farmers' body, opened in Moscow with one hundred delegates from forty countries, including the United States, Argentina and Mexico. *Cur. Hist.*, Nov.-Dec. 1923, 19: 336, 507.
- 11 PALESTINE. Sir Herbert Samuel, British High Commissioner, proposed to set up an Arab agency, parallel to Jewish agency authorized by the mandate, to cooperate with administration in matters affecting Arab interests, but the Arabs rejected the plan. *Cur. Hist.*, Dec. 1923, 19: 514.
- 12 to Nov. 7 ECONOMIC CONFERENCE ON GERMANY

October, 1923

- 16 LEAGUE OF NATIONS COVENANT. Membership of special commission of jurists to report to Council on legal interpretation of the Covenant announced by Secretariat. Commission consists of M. Adachi of Japan, Juan Antonio Buero of Uruguay, Henri Fromageot of France, Vittorio Orlando Ricci of Italy, M. Unden of Sweden, Señor Villa Urrutria of Spain, Charles de Visscher of Belgium, and Dr. J. A. van Hamel of Holland, director of Judicial Bureau of the League. *Cur. Hist.*, Dec. 1923, 19: 496. *N. Y. Times*, Oct. 17, 1923, p. 2.
- 16 POLAND—TURKEY. Perpetual treaty of peace approved by Polish cabinet. *Wash. Post*, Oct. 17, 1923, p. 1.
- 17 HUNGARIAN RECONSTRUCTION. Reparation Commission sanctioned a twenty-year moratorium for Hungarian reparation payments and invited League of Nations to frame plan for reconstruction similar to that for Austria. *Cur. Hist.*, Dec. 1923, 19: 510.
- 18 AUSTRIA—SOVIET REPARATIONS. Agreement between Austria and Soviet Union regarding reparations.

October, 1923

from Oct. 13-27. Text of proclamation: *Times*, Oct. 24, 1923, p. 14. On Oct. 29, the Republic issued a greeting to the world: Text: *N. Y. Times*, Oct. 30, 1923, p. 1. On Oct. 31, Great Britain informed Belgium and France that legality of provisional governments within the occupied territory was not recognized. *N. Y. Times*, Nov. 1, 1923, p. 3. M. Poincaré replied on Nov. 2, declaring Treaty of Versailles was not involved. *Cur. Hist.*, Dec. 1923, 19: 366. On Nov. 9 and 14, notes were exchanged between France and Great Britain relative to effect Separatist movement would have on the Treaty. *N. Y. Times*, Nov. 15, 1923, p. 2.

22-29 INTERNATIONAL LABOR CONFERENCE. Fifth session held at Geneva. *I. L. O. B.*, Nov. 7, 1923, p. 183. *Cur. Hist.*, Dec. 1923, 19: 486.

27 TURKISH REPUBLIC. National Assembly at Angora voted establishment of a republic. Mustapha Kemal Pasha elected President. *N. Y. Times*, Oct. 30, 1923, p. 1, *Cur. Hist.*, Dec. 1923, 19: 512.

1, 1923

that British had
left unsettled

November, 1923

- 5 MIXED CLAIMS COMMISSION (UNITED STATES AND GERMANY). Announced four decisions determining German liabilities for American claims, including those growing out of Lusitania case. No specific awards in Lusitania case. *Wash. Post*: Nov. 6, 1923, p. 2.
- 6 MILITARY CONTROL COMMISSION. Allied ambassadors sent note to Germany on Nov. 6 demanding that Commission be permitted to resume work at once, to determine if German armed forces exceed the number laid down in Versailles treaty. *N. Y. Times*, Nov. 7, 1923, p. 1.
- 8 BAVARIAN REVOLT. Adolph Hitler, General Erich von Ludendorff, and Dr. Gustav von Kahr seized control at Munich and appointed themselves a triumvirate of rulers for the nation. Proclamation issued in Germany on Nov. 9 asking support for national government. Text: *N. Y. Times*, Nov. 9, 1923, p. 1. The revolt came to a sudden end with capture of leaders. *N. Y. Times*, Nov. 10, 1923, p. 1.
- 8 WORLD PEACE PLAN. World Federation of Education Associations announced conditions for contest for \$25,000 prize to be awarded for plan considered most likely to bring to the world the greatest security from war. Rules: *Evening Star*, Nov. 8, 1923, p. 23.
- 12 CALIFORNIA ALIEN LAND LAW. Declared valid by U. S. Supreme Court. *Wash. Post*., Nov. 13, 1923, p. 2. *Supreme Court*, no. 26 and 111, Oct. term, 1923.
- 12 FINLAND—POLAND. Commercial treaty signed at Warsaw. *Temps*, Nov. 13, 1923, p. 1.
- 12 INTERNATIONAL COMMISSION OF JURISTS. State Department announced appointment of James Brown Scott and Jesse S. Reeves as American delegates to conference on codification of international law to be held in Rio de Janeiro in 1925. *Wash. Post*, Nov. 16, 1923, p. 9.
- 13 CHILE—PERU. Chile and Peru presented arguments to President Coolidge as arbitrator in Tacna Arica dispute. *N. Y. Times*, Nov. 14, 1923, p. 10.
- 13 FRANCE—GERMANY. Agreement reached between General Degoutte and German government concerning future status of railroads in occupied territory and establishing *modus vivendi* with state railroads in unoccupied territory. Summary: *N. Y. Times*, Nov. 13, 1923, p. 2.
- 13 FREDERICK WILLIAM, *ex-crown prince of Germany*. Arrived at Oels, Germany, from exile in Holland. *Wash. Post*, Nov. 14, 1923, p. 1.

November, 1923

- 15 INTERNATIONAL CONFERENCE ON COMMUNICATIONS AND TRANSIT.
Second general conference convened at Geneva, Consul at Geneva
acting as observer for United States. *Wash. Post*, Nov. 23,
1923, p. 1.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Paris, Oct. 13, 1919.

Adhesion:

Uruguay. Sept. 6, 1923. *D. O. (Uruguay)*, Oct. 1, 1923, núm. 5240.

AERIAL NAVIGATION. Paris, Oct. 13, 1919. Protocol. Paris, May 1, 1920.

Ratifications deposited:

Italy. April 10, 1923. *Monit.*, Aug. 24, 1923, p. 4170.

AGRICULTURAL WORKERS' ASSOCIATIONS. Geneva, Nov. 17, 1921.

Ratification:

Czechoslovakia. Aug. 31, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 105.

ARMS AND AMMUNITION TRADE. Saint Germain-en-Laye, Sept. 10, 1919.

Adhesion:

Uruguay. Sept. 6, 1923. *D. O. (Uruguay)*, Oct. 1, 1923, núm. 5240.

~~FAIR~~ NAVIGATION. Dresden, Feb. 22, 1923.

Promulgation:

Belgium. April 7, 1923. *Monit.*, Aug. 30, 1923, p. 4294.

EMPLOYMENT OF CHILDREN AS TRIMMERS AND STOKERS. Geneva, Nov. 11,
1921.

Ratification:

Rumania. Aug. 22, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 106. *L. N. O. J.*, Oct. 1923, p. 1231.

EMPLOYMENT OF CHILDREN IN AGRICULTURE. Geneva, Nov. 16, 1921.

Ratification:

Czechoslovakia. Aug. 31, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 105.

FREEDOM OF TRANSIT. Barcelona, April 20, 1921.

Adhesion:

Malay States. Aug. 22, 1923. *L. N. O. J.*, Oct. 1923, p. 1133.

Ratification:

Latvia. Sept. 29, 1923.

Norway. Sept. 4, 1923.

Rumania. Sept. 5, 1923. *L. N. O. J.*, Oct. 1923, p. 1133.

Ratification deposited:

Czechoslovakia.

Rumania. *L. N. M. S.*, Oct. 1923, p. 199.

GENEVA CONVENTION. Aug. 22, 1864. Revisions.

Adhesion:

Albania. Sept. 13, 1923. *E. G.*, Oct. 10, 1923, p. 311.

HUNGARIAN PEACE TREATY. Trianon, June 4, 1920.

Ratification:

Portugal. Oct. 10, 1923. *J. O.*, Oct. 23, 1923, p. 10110.

INTERNATIONAL EXCHANGE OF DOCUMENTS AND PUBLICATIONS. Brussels, March 15, 1886.

Adhesion:

Dominican Republic. Aug. 17, 1923. *Monit.*, Sept. 12, 1923, p. 4577.

LATIN AMERICAN UNION FOR MEDICAL INSTRUCTION. Montevideo, Feb. 5, 1923.

Adhesion:

Uruguay. Sept. 28, 1923, *D. O. (Uruguay)*, Oct. 1, 1923, núm. 5240.

LEAGUE OF NATIONS. Covenant. Protocol of Amendments. Geneva, Oct. 3-5, 1921.

Ratification:

Albania. (Art. 4, 6.) *L. N. M. S.*, Nov. 1923, p. 246.

Belgium. (Art. 4, 6, 12, 13, 15, 16, 26.) Sept. 28, 1923.

Brazil. (Art. 4, 6, 12, 13, 15, 16, 26.) July 7, 1923.

France. (Art. 6, 12, 13, 15, 26.) Aug. 2, 1923. *L. N. O. J.*, Oct. 1923, p. 1134.

Italy. (Art. 6.)

Latvia. (Art. 6.) *L. N. M. S.*, Oct. 1923, p. 197.

Ratifications deposited:

Czechoslovakia. (Art. 4, 6, 12, 13, 15, 26.) *L. N. M. S.*, Oct. 1923, p. 197.

Estonia. (Art. 4, 6, 12, 13, 15, 16, 26.) July 7, 1923. *L. N. M. S.*, Oct. 1923, p. 197.

Greece. (Art. 12, 13, 15, 26.) *L. N. M. S.*, Sept. 1923, p. 173.

Great Britain. (Art. 12.) July 5, 1923. *L. N. M. S.*, Aug. 1923, p. 144.

Rumania. (Art. 4, 6, 12, 13, 15, 16, 26.) *L. N. M. S.*, Oct. 1923, p. 197.

MEDICAL EXAMINATION OF YOUNG PERSONS EMPLOYED AT SEA. Geneva, Nov. 10, 1921.

Ratification:

Rumania. Aug. 22, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 106.

MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, Oct. 11, 1909.

Notification that convention is binding:

Hungary. July 13, 1923. *E. G.*, Sept. 5, 1923, p. 278.

NAVAL LIMITATIONS TREATY. Washington, Feb. 6, 1922.

Promulgation:

France. Oct. 12, 1923. *J. O.*, Oct. 21, 1923, p. 10079.

NAVIGABLE WATERWAYS CONVENTION AND PROTOCOL. Barcelona, April 20, 1921.

Adhesion:

Malay States. *L. N. M. S.*, Oct. 1923, p. 199.

Ratification deposited:

Norway. *L. N. M. S.*, Oct. 1923, p. 199.

OBSCENE PUBLICATIONS. Paris, May 4, 1910.

Adhesion:

Siam. Sept. 13, 1923. *J. O.*, Sept. 21, 1923, p. 9234. *E. G.*, Oct. 10, 1923, p. 314.

OPIUM CONVENTION, 2D. The Hague, Jan. 23, 1912.

Ratification:

Costa Rica. Aug. 14, 1923. *Commerce reports*, Nov. 19, 1923, p. 515.

PACIFIC POSSESSIONS TREATY AND DECLARATION. Washington, Dec. 13, 1921.

Promulgation:

France. Oct. 6, 1923. *J. O.*, Oct. 21, 1923, p. 10084.

PACIFIC POSSESSIONS TREATY. Supplement. Washington, Feb. 6, 1922.

Promulgation:

France. Oct. 6, 1923. *J. O.*, Oct. 21, 1923, p. 10084.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Optional clause. Geneva, Dec. 16, 1920.

Signature:

Latvia. *L. N. M. S.*, Oct. 1923, p. 199.

POSTAL CONVENTION. Madrid, Nov. 13, 1920.

Adhesion:

Palestine. Sept. 14, 1922. *E. G.*, Oct. 10, 1923, p. 314.

Ireland. *Monit.*, Oct. 12, 1923, p. 5022.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, March 20, 1883. Revision. Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Canada. Aug. 21, 1923. *E. G.*, Sept. 5, 1923, p. 267. *Monit.*, Sept. 21, 1923, p. 4713.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912.

Adhesion:

Brunei (British protectorate). Oct. 18, 1923. *Monit.*, Nov. 13, 1923, p. 5449.

Esthonia. July 1, 1923. *E. G.*, Nov. 7, 1923, p. 416.

RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST. Barcelona, April 20, 1921.

Ratification deposited:

Norway. *L. N. M. S.*, Oct. 1923, p. 199.

TURKISH PEACE TREATY. Lausanne, July 24, 1923.

Ratification:

Greece. Aug. 26, 1923. *Times*, Sept. 8, 1923, p. 7. *Cur. Hist.*, Oct. 1923, 19: 88.

UNIVERSAL POSTAL UNION. Revision. Madrid, Nov. 30, 1920.

Adhesion:

Irish Free State. May 14, 1923. *E. G.*, Sept. 12, 1923, p. 290.

Palestine. *Monit.*, Nov. 1, 1923, p. 5319.

Ratification:

Tripolitania.

Cyrenaica.

Eritrea.

Somaliland (Italian colonies). *Monit.*, Nov. 1, 1923, p. 5319.

WEEKLY REST IN INDUSTRY. Geneva, Nov. 17, 1921.

Ratification:

Czechoslovakia. Aug. 31, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 105.

Rumania. Aug. 22, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 106.

WEIGHTS AND MEASURES BUREAU. Paris, May 20, 1875. Revision, Sèvres, Oct. 6, 1921.

Ratifications deposited:

Belgium. July 28, 1923. *E. G.*, Oct. 10, 1923, p. 313.

Norway. Aug. 3, 1923. *Monit.*, Sept. 16, 1923, p. 4645.

United States. Oct. 24, 1923. *U. S. Treaty series*, no. 673.

WHITE LEAD IN PAINT. Geneva, Nov. 19, 1921.

Ratification:

Czechoslovakia. Aug. 31, 1923. *I. L. O. B.*, Sept. 12, 1923, p. 105.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921.

Ratification:

Rumania. Sept. 5, 1923. *Monit.*, Sept. 22, 1923, p. 4722.

Ratifications deposited:

Czechoslovakia. Sept. 29, 1923. *Monit.*, Nov. 9, 1923, p. 5410.

Netherlands. *Monit.*, Oct. 22-23, 1923, p. 5171.

WHITE SLAVE TRADE. Paris, May 18, 1904.

Adhesion:

Cuba. April 5, 1923. *Monit.*, Oct. 3, 1923, p. 4886. *E. G.*, Oct. 10, 1923, p. 312.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Cuba. April 5, 1923. *Monit.*, Oct. 3, 1923, p. 4886.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Aerial Navigation, Convention for the Regulation of. Paris, Oct. 13, 1919. (Treaty Series, 1923, No. 14.) 2½d.

American debt. Arrangements for funding the British debt to the United States of America. (Cmd. 1912.) 3½d.

Boundary line between Syria and Palestine from the Mediterranean to Ell Hammé. Agreement between H. M. Government and the French Government. (Treaty Series, 1923, No. 13.) 2s. 1d.

Cameroons, West Africa. Reports on the British Sphere, for 1922, with a covering despatch from the acting governor of Nigeria. *Colonial Office.* 2s. 1d.

Commercial relations between the British Empire and Roumania. Notes exchanged between the two governments. (Treaty Series, 1923, No. 15.) 2½d.

Commercial Treaties, Hertslet's. Vol. XXIX, 1923. *Foreign Office.* 33s. 3d.

~~Ellis~~ Island Immigration Station. Despatch from H. M. Ambassador at Washington. (United States, No. 2, 1923.) 3½d.

Extradition. Order in Council directing that the Extradition Acts shall apply in the cases of Austria, Belgium, France, Hungary, Monaco, Netherlands, Norway, Portugal, Siam, Spain, Sweden, Tunis, and Uruguay, in accordance with existing treaties, as supplemented by convention of May 4, 1910, for the suppression of the White Slave Traffic. July 30, 1923. (S. R. & O. 1923, No. 971.) 1½d.

German Reparation Recovery (No. 1) Order, Aug. 1, 1923. (S. R. & O. 1923, No. 904.) 1½d.

Iraq administration report, Oct. 1920–Mar. 1922. *Colonial Office.* 4s. 2d.

Irish Free State. Correspondence between H. M. Government and Irish Free State relative to Art. 12 of articles of agreement for a treaty between Great Britain and Ireland. (Cmd. 1560.) (Cmd. 1928.) 3½d.

———. Statement of financial position between the British Government and the Irish Free State in 1923–24, with an estimate of the value of certain transferred property. (Cmd. 1930.) 2½d.

League of Nations. Report by British representative on 25th session of the Council. (Misc. No. 4, 1923.) 3½d.

¹Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

Mannheim Convention of 1868, Accession of Netherlands to modifications introduced by the Treaty of Versailles into the Protocol and additional protocol. Signed at Paris, Jan. 21, 1921, and March 29, 1923. (Treaty Series, 1923, No. 12.) 3½d.

Mixed Arbitral Tribunals. *Recueil des Décisions*. Nos. 25, 26, 27, April, May and June, 1923. (Combined.) 18s. 3d.

Nationality decrees promulgated in Tunis and Morocco (French zone) on Nov. 8, 1921. Notes exchanged between the British and French Governments relative to. (Treaty Series, 1923, No. 11.) 2½d.

Nationality of married women. Report of Select Committee. (H. L. Papers and Bills, 1923, No. 149; H. C. Repts. and Papers, 1923, No. 115.) 2½d.

Palestine administration report, 1922. *Colonial Office*. 1s. 7d.

Reparation Commission. Document VI. Reparation account, relative to the amount of payments to be effected by Germany. Pt. 2. 1s. 1d.

———. Paper V. Report on the work of the Reparation Commission from 1920 to 1922. 5s. 4d.

Reparation payments by Germany. Correspondence with the Allied Governments. (Misc. No. 5, 1923.)

Tanganyika Territory report for 1922. *Colonial Office*. 1s. 3½d.

Togoland, West Africa. Report on the British Mandated Sphere, 1922, with a covering despatch from the governor of the Gold Coast. *Colonial Office*. 1s. 10d.

Treaties of Peace Orders, reprinted as amended by subsequent orders: Aug. 18, 1919, 8d; Aug. 13, 1920 (Austria), 9d; Aug. 13, 1920 (Bulgaria), 8d; Aug. 10, 1921 (Hungary), 9d.

———. Amendment Order No. 2, July 30, 1923. 1½d.

Turkey, Treaty of peace with, and other instruments signed at Lausanne, July 24, 1923, with agreements between Greece and Turkey signed on Jan. 30, 1923; and subsidiary documents forming part of the Turkish peace settlement. (Treaty Series, 1923, No. 16.) 8s. 3½d.

———. Notes of British and French delegates at Lausanne regarding certain concessions in territories detached from Turkey. July 24, 1923. (Treaty Series, 1923, No. 17.) 2½d.

———. Agreement between British and French delegations at Lausanne regarding Art. 34 of the Treaty of Lausanne (Egyptian nationality). July 24, 1923. (Treaty Series, 1923, No. 18.) 2½d.

UNITED STATES ²

Central American Conference, Washington, Dec. 4, 1922–Feb. 7, 1923. Proceedings. 403 p. [English and Spanish.] 1 paper, 40c.

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Conference on Limitation of Armament, with notes and index, 1921. International Law Documents, compiled by G. G. Wilson. 1923. 392 p. *Naval War College*. Cloth, 75c.

Consular courts. Manual of probate procedure in American consular courts in China. J. K. Davis and W. E. Smith. 1923. vii+32 p. Paper, 5c.

Consular Service Regulations, 1896, Executive order amending, concerning privileges and powers under treaties and conventions, supervisory powers of consuls-general and diplomatic representatives, relations to naval officers of United States, and correspondence with Dept. of State. Sept. 6, 1923. 4 p. (No. 3899.) *State Dept.*

Foreign relations of United States. Address prepared by President Warren G. Harding, intended to be delivered at San Francisco, Cal. July 31, 1923. 14 p.

———. List of publications for sale by the Superintendent of Documents. July, 1923. (Price list 65, 6th ed.) *Government Printing Office*.

Haiti, Report of American High Commissioner to. Jan. 1, 1923. 25 p. map. *State Dept.*

International American Conference, Santiago, Chile, March 25–May 3, 1923. Report of delegates of United States. 37 p. Paper, 5c.

International Court of Justice. Address of President Harding, St. Louis, June 21, 1923. 12 p.

Narcotics. Traffic in habit-forming narcotic drugs, statement of attitude of Government of United States with documents relating thereto. 1923. 24 p. Paper, 5c.

Pacific Islands Treaty. Agreement between United States, British Empire, France, and Japan, relating to their insular possessions and dominions in region of Pacific Ocean, signed Washington, Dec. 13, 1921. 8 p. [French and English.] (Treaty Series 669.) *State Dept.*

———. Supplementary agreement signed Feb. 6, 1922. 5 p. [French and English.] (Treaty Series 670.)

Passports, Notice concerning use of, June 20, 1923. 8 p. *State Dept.*

Rulers. List of foreign sovereignties and their rulers. 16th ed. July 18, 1923. *Naturalization Bureau*.

Treaties, conventions, international acts, protocols, and agreements between United States and other Powers, 1910–1923. Vol. 3. xxxii+2493–3918 p. ll. (S. doc. 348, 67th Cong. 4th sess.) Cloth, \$1.50. (Vols. 1 and 2, 1776–1909, were issued as S. doc. 357, 61st Cong. 2d sess.)

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

ARBITRATION BETWEEN GREAT BRITAIN AND COSTA RICA

Opinion and Award of William H. Taft, Sole Arbitrator

Washington, D. C., October 18, 1923

This is a proceeding under a treaty of arbitration between Great Britain and Costa Rica. The ratifications of the treaty were exchanged on March 7, 1923. The scope of the questions to be decided is to be gathered from two recitals and Article I of the treaty. The two recitals are as follows:

Whereas there has arisen between their respective governments a difference as to the application of Law No. 41 of the 21st of August, 1920, to two cases in which British corporations are interested, to wit: to the concession granted by the Aguilar-Amory contract of the 25th June, 1918, of which the "Central Costa Rica Petroleum Company" is owner, and the delivery to the Royal Bank of Canada of 998,000 colones in notes of 1000 colones each in payment of a cheque drawn by the Tinoco administration against the Banco Internacional de Costa Rica, which cheque was deposited in the government's account with the said Royal Bank; and

Whereas the claims and contentions of the two governments in regard to these points have been set forth, on the part of His Britannic Majesty's Government, in the notes which His Britannic Majesty's Minister addressed to the Costa Rican Ministry for Foreign Affairs on the 13th of July and the 8th November, 1921, and in antecedent correspondence; and, on the part of the Costa Rican Government, in their notes in reply relative to the present diplomatic controversy and especially in the Congressional resolution of the 13th December of that same year.

Article I. A single arbitrator, appointed by mutual agreement, taking into consideration existing agreements, the principles of public and international law, and in view of the allegations, documents and evidence which each of the two governments may present to him, shall decide:

1. Whether the demand of His Britannic Majesty's Government is well founded;

2. Or whether on the contrary the Government of Costa Rica is justified in not recognizing the said claims by maintaining the declaration of nullity contained in Law 41.

The arbitrator shall have the necessary jurisdiction to establish procedure and to dictate without any restriction whatsoever other resolutions which may arise as a consequence of the question formulated, and which, in conformity with his judgment, may be necessary or expedient

to fulfil in a just and honorable manner the purposes of this convention; and he shall determine what one party may owe the other for the expenses of the claim. The arbitrator shall also decide with regard to the payment of the expenses of the arbitration.

A reservation in respect to the foregoing provision was made by the Congress of Costa Rica after the signing of the treaty, and this was accepted by Great Britain, as follows:

Article 2. The approval given in the preceding article to the treaty is done with the understanding that nothing in the treaty would prevent that Costa Rica shall bring into play all means of defense enumerated in the Congressional resolution on the 13th of December, 1921, to which reference is made in the preamble of the treaty and that the arbitrator shall base his award in all or any of the said means of defense.

In January, 1917, the Government of Costa Rica, under President Alfredo Gonzalez, was overthrown by Frederico Tinoco, the Secretary of War. Gonzalez fled. Tinoco assumed power, called an election, and established a new constitution in June, 1917. His government continued until August, 1919, when Tinoco retired, and left the country. His government fell in September following. After a provisional government under one Barquero, the old constitution was restored and elections held under it. The restored government is a signatory to this treaty of arbitration.

On the 22nd of August, 1922, the Constitutional Congress of the restored Costa Rican Government passed a law known as Law of Nullities No. 41. It invalidated all contracts between the executive power and private persons, made with or without approval of the legislative power between January 27, 1917 and September 2, 1919, covering the period of the Tinoco government. It also nullified the legislative decree No. 12 of the Tinoco government, dated June 28, 1919, authorizing the issue of the fifteen million colones currency notes. The colon is a Costa Rican gold coin or standard nominally equal to forty-six and one-half cents of an American dollar, but it is uncoined and the exchange value of the paper colon actually in circulation is much less. The Nullities Law also invalidated the legislative decree of the Tinoco government of July 8, 1919, authorizing the circulation of notes of the nomination of 1000 colones, and annulled all transactions with such colones bills between holders and the state, directly or indirectly, by means of negotiation or contract, if thereby the holders received value as if they were ordinary bills of current issue.

The claim of Great Britain is that the Royal Bank of Canada and the Central Costa Rica Petroleum Company are British corporations whose shares are owned by British subjects; that the Banco Internacional of Costa Rica and the Government of Costa Rica are both indebted to the Royal Bank in the sum of 998,000 colones, evidenced by 998 one thousand colones bills held by the Bank; that the Central Costa Rica Petroleum Company owns, by due assignment, a grant by the Tinoco government in 1918 of the

right to explore for an exploit oil deposits in Costa Rica, and that both the indebtedness and the concession have been annulled without right by the Law of Nullities and should be excepted from its operation. She asks an award that she is entitled on behalf of her subjects to have the claim of the bank paid, and the concession recognized and given effect by the Costa Rican Government.

The Government of Costa Rica denies its liability for the acts or obligations of the Tinoco government and maintains that the Law of Nullities was a legitimate exercise of its legislative governing power. It further denies the validity of such claims on the merits, unaffected by the Law of Nullities.

It is convenient to consider first the general objections to both claims of Great Britain, urged by Costa Rica, and then if such general objections cannot prevail, to consider the merits of each claim and Costa Rica's special defenses to it.

Coming now to the general issues applicable to both claims, Great Britain contends, first, that the Tinoco government was the only government of Costa Rica *de facto* and *de jure* for two years and nine months; that during that time there is no other government disputing its sovereignty, that it was in peaceful administration of the whole country, with the acquiescence of its people.

Second, that the succeeding government could not by legislative decree avoid responsibility for acts of that government affecting British subjects, or appropriate or confiscate rights and property by that government except in violation of international law; that the act of Nullities is as to British interests, therefore itself a nullity, and is to be disregarded, with the consequence that the contracts validly made with the Tinoco government must be performed by the present Costa Rican Government, and that the property which has been invaded or the rights nullified must be restored.

To these contentions the Costa Rican Government answers: First, that the Tinoco government was not a *de facto* or *de jure* government according to the rules of international law. This raises an issue of fact.

Second, that the contracts and obligations of the Tinoco government, set up by Great Britain on behalf of its subjects, are void, and do not create a legal obligation, because the government of Tinoco and its acts were in violation of the constitution of Costa Rica of 1871.

Third, that Great Britain is stopped by the fact that it did not recognize the Tinoco government during its incumbency, to claim on behalf of its subjects that Tinoco's was a government which could confer rights binding on its successor.

Fourth, that the subjects of Great Britain, whose claims are here in controversy, were either by contract or the law of Costa Rica bound to pursue their remedies before the courts of Costa Rica and not to seek diplomatic interference on the part of their home government.

Dr. John Bassett Moore, now a member of the Permanent Court of Inter-

national Justice, in his *Digest of International Law*, Volume I, p. 249, announces the general principle which has had such universal acquiescence as to become well settled international law:

Changes in the government or the internal policy of a state do not as a rule affect its position in international law. A monarchy may be transformed into a republic or a republic into a monarchy; absolute principles may be substituted for constitutional, or the reverse; but, though the government changes, the nation remains, with rights and obligations unimpaired.

The principle of the continuity of states has important results. The state is bound by engagements entered into by governments that have ceased to exist; the restored government is generally liable for the acts of the usurper. The governments of Louis XVIII and Louis Philippe so far as practicable indemnified the citizens of foreign states for losses caused by the government of Napoleon; and the King of the Two Sicilies made compensation to citizens of the United States for the wrongful acts of Murat.

Again Dr. Moore says:

The origin and organization of government are questions generally of internal discussion and decision. Foreign powers deal with the existing *de facto* government, when sufficiently established to give reasonable assurance of its permanence, and of the acquiescence of those who constitute the state in its ability to maintain itself, and discharge its internal duties and its external obligations.

The same principle is announced in Professor Borchard's new work on *The Diplomatic Protection of Citizens Abroad*:

Considering the characteristics and attributes of the *de facto* government, a general government *de facto* having completely taken the place of the regularly constituted authorities in the state binds the nation. So far as its international obligations are concerned, it represents the state. It succeeds to the debts of the regular government it has displaced and transmits its own obligations to succeeding titular governments. Its loans and contracts bind the state and the state is responsible for the governmental acts of the *de facto* authorities. In general its treaties are valid obligations of the state. It may alienate the national territory and the judgments of its courts are admitted to be effective after its authority has ceased. An exception to these rules has occasionally been noted in the practice of some of the states of Latin America, which declare null and void the acts of a usurping *de facto* intermediary government, when the regular government it has displaced succeeds in restoring its control. Nevertheless, acts validly undertaken in the name of the state and having an international character cannot lightly be repudiated and foreign governments generally insist on their binding force. The legality or constitutional legitimacy of a *de facto* government is without importance internationally so far as the matter of representing the state is concerned. (Bluntschli, Sects. 44, 45, 120; Holtzendorff, II, Sect. 21; Pradier Fodere, Sect. 134, 139; Rivier, II, 131, 440; Rougier, 481; *France v. Chile*, Franco Chilean Arbitration, Lausanne, p. 220.)

The same views are expressed by Chancellor Kent (1 Comm. 14th ed., p. 25), by Mr. Wheaton (Wheaton's *International Law*, Philippon's 5th Eng. ed., p. 37), and by Mr. Hall (*International Law*, 6th ed., J. B. Attay, 1909, pp. 20, 21), and by Dr. Woolsey in his *Introduction to the Study of International Law* (ed. 1873, pp. 32, 52, 53, 171, 172).

First, what are the facts to be gathered from the documents and evidence submitted by the two parties as to the *de facto* character of the Tinoco government?

In January, 1917, Frederico A. Tinoco was Secretary of War under Alfredo Gonzalez, the then President of Costa Rica. On the ground that Gonzalez was seeking reelection as President in violation of a constitutional limitation, Tinoco used the army and navy to seize the government, assume the provisional headship of the Republic and become Commander-in-Chief of the army. Gonzalez took refuge in the American Legation, thence escaping to the United States. Tinoco constituted a provisional government at once and summoned the people to an election for deputies to a constituent assembly on the first of May, 1917. At the same time he directed an election to take place for the Presidency and himself became a candidate. An election was held. Some 61,000 votes were cast for Tinoco and 259 for another candidate. Tinoco then was inaugurated as the President to administer his powers under the former constitution until the creation of a new one. A new constitution was adopted June 8, 1917, supplanting the constitution of 1871. For a full two years Tinoco and the legislative assembly under him peaceably administered the affairs of the Government of Costa Rica, and there was no disorder of a revolutionary character during that interval. No other government of any kind asserted power in the country. The courts sat, Congress legislated, and the government was duly administered. Its power was fully established and peaceably exercised. The people seemed to have accepted Tinoco's government with great good will when it came in, and to have welcomed the change. Even the committee of the existing government, which formulated and published a report on May 29, 1920, directing the indictment of President Tinoco for the crime of military revolution and declaring the acts of his régime as null and void and without legal value, used this language:

Without having a constitution to establish the office of President and determine his functions, and even to indicate the period for which he was to be elected, the election was held by the sole will of the person who was violently exercising the executive power. And as was natural, the election fell to the same Mr. Tinoco, and, sad to relate, the country applauded! The act, therefore, of decreeing that said election should be held under such conditions is contrary to the most rudimentary principles of political law.

The quotation is only important to show the fact of the then acquiescence of the people in the result. Though Tinoco came in with popular approval,

the result of his two years administration of the law was to rouse opposition to him. Conspiracies outside of the country were projected to organize a force to attack him. But this did not result in any substantial conflict or even a nominal provisional government on the soil until considerably more than two years after the inauguration of his government, and did not result in the establishment of any other real government until September of that year, he having renounced his Presidency in August preceding, on the score of his ill health, and withdrawn to Europe. The truth is that throughout the record as made by the case and counter case, there is no substantial evidence that Tinoco was not in actual and peaceable administration without resistance or conflict or contest by anyone until a few months before the time when he retired and resigned.

Speaking of the resumption of the present government, this passage occurs in the argument on behalf of Costa Rica:

Powerful forces in Costa Rica were opposed to Tinoco from the outset, but his overthrow by ballot or unarmed opposition was impossible and it was equally impossible to organize armed opposition against him in Costa Rican territory.

It is true that action of the supporters of those seeking to restore the former government was somewhat delayed by the influence of the United States with Gonzalez and his friends against armed action, on the ground that military disturbances in Central America during the World War would be prejudicial to the interests of the Allied Powers. It is not important, however, what were the causes that enabled Tinoco to carry on his government effectively and peaceably. The question is, must his government be considered a link in the continuity of the Government of Costa Rica? I must hold that from the evidence that the Tinoco government was an actual sovereign government.

But it is urged that many leading Powers refused to recognize the Tinoco government, and that recognition by other nations is the chief and best evidence of the birth, existence and continuity of succession of a government. Undoubtedly recognition by other Powers is an important evidential factor in establishing proof of the existence of a government in the society of nations. What are the facts as to this? The Tinoco government was recognized by Bolivia on May 17, 1917; by Argentina on May 22, 1917; by Chile on May 22, 1917; by Haiti on May 22, 1917; by Guatemala on May 28, 1917; by Switzerland on June 1, 1917; by Germany on June 10, 1917; by Denmark on June 18, 1917; by Spain on June 18, 1917; by Mexico on July 1, 1917; by Holland on July 11, 1917; by the Vatican on June 9, 1917; by Colombia on August 9, 1917; by Austria on August 10, 1917; by Portugal on August 14, 1917; by El Salvador on September 12, 1917; by Roumania on November 15, 1917; by Brazil on November 28, 1917; by Peru on December 15, 1917; and by Ecuador on April 23, 1917.

What were the circumstances as to the other nations?

The United States, on February 9, 1917, two weeks after Tinoco had assumed power, took this action:

The Government of the United States has viewed the recent overthrow of the established government in Costa Rica with the gravest concern and considers that illegal acts of this character tend to disturb the peace of Central America and to disrupt the unity of the American continent. In view of its policy in regard to the assumption of power through illegal methods, clearly enunciated by it on several occasions during the past four years, the Government of the United States desires to set forth in an emphatic and distinct manner its present position in regard to the actual situation in Costa Rica which is that it will not give recognition or support to any government which may be established unless it is clearly proven that it is elected by legal and constitutional means.

And again on February 24, 1917:

In order that citizens of the United States may have definite information as to the position of this Government in regard to any financial aid which they may give to, or any business transaction which they may have with those persons who overthrew the constitutional Government of Costa Rica by an act of armed rebellion, the Government of the United States desires to advise them that it will not consider any claims which may in the future arise from such dealings, worthy of its diplomatic support.

The Department of State issued the following in April, 1918:

The Department of State has received reports to the effect that those citizens of Costa Rica now exercising the functions of government in the Republic of Costa Rica have been led to believe by those persons who are acting as their agents, that the Government of the United States was considering granting recognition to them as constituting the Government of Costa Rica.

In order to correct any such impression which is absolutely erroneous, the Government of the United States desires to state clearly and emphatically that it has not altered the attitude which it has assumed in regard to the granting of recognition to the above mentioned citizens of Costa Rica and which was conveyed to them in February, 1917, and further that this attitude will not be altered in the future.

Probably because of the leadership of the United States in respect to a matter of this kind, her then Allies in the war, Great Britain, France and Italy, declined to recognize the Tinoco government. Costa Rica was, therefore, not permitted to sign the Treaty of Peace at Versailles, although the Tinoco government had declared war against Germany.

The merits of the policy of the United States in this non-recognition it is not for the arbitrator to discuss, for the reason that in his consideration of this case, he is necessarily controlled by principles of international law, and however justified as a national policy non-recognition on such a ground may be, it certainly has not been acquiesced in by all the nations of the world, which is a condition precedent to considering it as a postulate of international law.

The non-recognition by other nations of a government claiming to be a national personality, is usually appropriate evidence that it has not attained the independence and control entitling it by international law to be classed as such. But when recognition *vel non* of a government is by such nations determined by inquiry, not into its *de facto* sovereignty and complete governmental control, but into its illegitimacy or irregularity of origin, their non-recognition loses something of evidential weight on the issue with which those applying the rules of international law are alone concerned. What is true of the non-recognition of the United States in its bearing upon the existence of a *de facto* government under Tinoco for thirty months is probably in a measure true of the non-recognition by her Allies in the European War. Such non-recognition for any reason, however, cannot outweigh the evidence disclosed by this record before me as to the *de facto* character of Tinoco's government, according to the standard set by international law.

Second. It is ably and earnestly argued on behalf of Costa Rica that the Tinoco government cannot be considered a *de facto* government, because it was not established and maintained in accord with the constitution of Costa Rica of 1871. To hold that a government which establishes itself and maintains a peaceful administration, with the acquiescence of the people for a substantial period of time, does not become a *de facto* government unless it conforms to a previous constitution would be to hold that within the rules of international law a revolution contrary to the fundamental law of the existing government cannot establish a new government. This cannot be, and is not, true. The change by revolution upsets the rule of the authorities in power under the then existing fundamental law, and sets aside the fundamental law in so far as the change of rule makes it necessary. To speak of a revolution creating a *de facto* government, which conforms to the limitations of the old constitution is to use a contradiction in terms. The same government continues internationally, but not the internal law of its being. The issue is not whether the new government assumes power or conducts its administration under constitutional limitations established by the people during the incumbency of the government it has overthrown. The question is, has it really established itself in such a way that all within its influence recognize its control, and that there is no opposing force assuming to be a government in its place? Is it discharging its functions as a government usually does, respected within its own jurisdiction?

Reference is further made, on behalf of Costa Rica, to the Treaty of Washington, December 20, 1907, entered into by the Republics of Central America, in which it was agreed that

The governments of the contracting parties will not recognize any one who rises to power in any of the five republics in consequence of a coup d'état or by a revolution against a recognized government until the representatives of the people by free elections have reorganized the country in constitutional form.

Such a treaty could not affect the rights of subjects of a government not a signatory thereto, or amend or change the rules of international law in the matter of *de facto* governments. Their action under the treaty could not be of more weight in determining the existence of a *de facto* government under Tinoco than the policy of the United States, already considered. Moreover, it should be noted that all the signatories to the treaty but Nicaragua manifested their conviction that the treaty requirement had been met in the case of the Tinoco government, by recognizing it after the adoption of the constitution of 1917 and the election of Tinoco.

Third. It is further objected by Costa Rica that Great Britain by her failure to recognize the Tinoco government is estopped now to urge claims of her subjects dependent upon the acts and contracts of the Tinoco government. The evidential weight of such non-recognition against the claim of its *de facto* character I have already considered and admitted. The contention here goes further and precludes a government which did not recognize a *de facto* government from appearing in an international tribunal in behalf of its nationals to claim any rights based on the acts of such government.

To sustain this view a great number of decisions in English and American courts are cited to the point that a municipal court cannot, in litigation before it, recognize or assume the *de facto* character of a foreign government which the executive department of foreign affairs of the government of which the court is a branch has not recognized. This is clearly true. It is for the executive to decide questions of foreign policy and not courts. It would be most unseemly to have a conflict of opinion in respect to foreign relations of a nation between its department charged with the conduct of its foreign affairs and its judicial branch. But such cases have no bearing on the point before us. Here the executive of Great Britain takes the position that the Tinoco government which it did not recognize, was nevertheless a *de facto* government that could create rights in British subjects which it now seeks to protect. Of course, as already emphasized, its failure to recognize the *de facto* government can be used against it as evidence to disprove the character it now attributes to that government, but this does not bar it from changing its position. Should a case arise in one of its own courts after it has changed its position, doubtless that court would feel it incumbent upon it to note the change in its further rulings.

Precedents in American arbitrations are cited to show that an estoppel like the one urged does arise. They are Schultz's case (Moore, *International Arbitrations*, Vol. 3, 2973), Janson's case (*ibidem*, 2902), and Jarvis's case (Ralston, *Venezuela Arbitrations*, 150). In the opinions of these cases delivered by American commissioners, there are expressions sustaining the view that the bar of an estoppel exists, but an examination shows that no authorities are cited and no arguments are made in support of the view. Moreover, the array of facts in the cases was conclusive against the existence of a *de facto* government, and the expressions were unnecessary to the conclu-

sion. In Schultz's case the claim of an American citizen was against the Juarez government for loss of goods by fire between the lines of battle waged by Miramon's forces against Juarez's government. The claim against Juarez's government was plainly not sustainable, first because it occurred in the train of war and, second, because the Miramon forces never had in fact constituted a *de facto* government. The Janson case before the same tribunal was for the value of an American bark seized by Miramon's soldiers to escape out of the country from the victorious army of Juarez. The commissioner devotes many pages to a résumé of evidence to show that neither Miramon nor Maximilian, with whom he acted, had ever had a *de facto* government; that Juarez was always in control of the greater part of Mexico and always resisting. The truth is that the language of the decisions should be more properly construed to emphasize the great and overwhelming weight to be given to the recognition of Juarez by the United States and its non-recognition of Miramon as evidence against the *de facto* character of the government of the latter, than to uphold the theory of a bar by estoppel.

In Jarvis's case the facts were that Paez, a Venezuelan citizen, was an insurgent against the existing government of Venezuela in 1849, and enlisted in his conspiracy Jarvis, the American claimant, who furnished him a ship and arms and ammunition. This was a crime against the United States on Jarvis's part, because the United States was on terms of amity with Venezuela. The expedition failed. In 1861, thirteen years later, however, when Paez was in Venezuela, a sudden outbreak placed him in power. In 1863, just as he was about to retire with the collapse of his government, he issued bonds to Jarvis to repay him for his outlay in the unsuccessful insurrection of 1849, twelve years before. The commissioner held that there was no lawful consideration for the bonds. Certainly this was a righteous conclusion. It was a personal obligation of Paez, if it was an obligation at all. It was not a debt of Venezuela. It was invalid and unlawful because of its vicious origin, both by the laws of the United States and the laws of Venezuela. The commissioner also by way of additional but unnecessary support to his conclusion said the United States was estopped to urge the claim.

These are, so far as I am advised, the only authorities to be found either in decided cases or in text writers applying the principles of estoppel to bar a nation seeking to protect its nationals in their rights against the successor of a *de facto* government.

I do not understand the arguments on which an equitable estoppel in such case can rest. The failure to recognize the *de facto* government did not lead the succeeding government to change its position in any way upon the faith of it. Non-recognition may have aided the succeeding government to come into power; but subsequent presentation of claims based on the *de facto* existence of the previous government and its dealings does not work an injury to the succeeding government in the nature of a fraud or breach of

faith. An equitable estoppel to prove the truth must rest on previous conduct of the person to be estopped, which has led the person claiming the estoppel into a position in which the truth will injure him. There is no such case here.

There are other estoppels recognized in municipal law than those which rest on equitable considerations. They are based on public policy. It may be urged that it would be in the interest of the stability of governments and the orderly adjustment of international relations, and so a proper rule of international law, that a government in recognizing or refusing to recognize a government claiming admission to the society of nations should thereafter be held to an attitude consistent with its deliberate conclusion on this issue. Arguments for and against such a rule occur to me; but it suffices to say that I have not been cited to text writers of authority or to decisions of significance indicating a general acquiescence of nations in such a rule. Without this, it cannot be applied here as a principle of international law.

It is urged that the subjects of Great Britain knew of the policy of their home government in refusing to recognize the Tinoco régime and cannot now rely on protection by Great Britain. This is a question solely between the home government and its subjects. That government may take the course which the United States has done and refuse to use any diplomatic offices to promote such claims and thus to leave its nationals to depend upon the sense of justice of the existing Costa Rican Government, as they were warned in advance would be its policy, or it may change its conclusion as to the *de facto* existence of the Tinoco government and offer its subjects the protection of its diplomatic intervention. It is entirely a question between the claimants and their own government. It should be noted that Great Britain issued no such warning to its subjects as did the United States to its citizens in this matter.

The fourth point made on behalf of Costa Rica against the claims here pressed is that both claimants are bound either by their own contractual obligation entered into with the Government of Costa Rica, or by the laws of Costa Rica, to which they subscribed, not to present their claims by way of diplomatic intervention of their home government, but to submit their claims to the courts of Costa Rica. This is in effect a plea in abatement to the jurisdiction of the arbitrator, which, under the terms of the arbitration, Costa Rica has the right to advance.

So far as the Amory concession, and the claim of the Petroleum Company is concerned, the plea turns on two provisions of the concession. One is on Article XIX, as follows:

The present contract shall elapse, and the government may so declare by an Executive Order, in the following cases only:

6. If the contractor has recourse to diplomatic action in connection with any dispute or litigation as to the rights and privileges granted by this contract, but the forfeiture of this concession shall not be pro-

nounced by the government without having given to the concessionaire the opportunity to defend himself nor without having submitted the point to arbitration.

Article XXI:

Any dispute arising between the parties in respect to the interpretation or execution of this contract which cannot be compromised, shall be submitted to arbitration and decided according to the laws of Costa Rica. If the parties fail to agree on one arbitrator, each shall appoint one, and the two arbitrators in case of disagreement shall choose a third as umpire.

These two limitations do not seem to include within their scope such a question as the power of the Tinoco government to grant the concession, or the obligation of the present government of Costa Rica to recognize it. They cover the interpretation and construction of the contract rather than the fundamental question of its existence.

With respect to the Royal Bank, the facts are somewhat different. The bank obtained the right to establish a branch or agency in Costa Rica under the following order:

DEPARTMENT OF TREASURY AND COMMERCE

No. 437

SAN JOSE, August 7, 1915.

Whereas it is recorded in the documents previously inserted that the Royal Bank of Canada, a society domiciled in Montreal, Province of Quebec, in the Dominion of Canada, is organized in accordance with the laws of that country; that said society has resolved to establish a branch or agency in Costa Rica, and that it has appointed in that country a representative clothed with sufficient power to manage the affairs of the branch or agency.

The President of the Republic

Resolves:

That it is in order to enter in the Mercantile Register the constitutive deed of the Royal Bank of Canada, as well as the additional one relating to the branch in this country, under the understanding that, in accordance with the provisions contained in Articles 11 and 12 of the Banking Law, the branch or agency shall not invoke its status as a foreign corporation, with respect to matters or operations of the bank, which in all cases shall be decided by the law courts of Costa Rica, and in entire subjection to the laws of that Republic.

Let it be published.

GONZALEZ.

*Assistant Secretary of State in Charge of the
Treasury and Commerce.*

JORGE GUARDIA.

Articles 11 and 12 referred to in this banking law are as follows:

Article 11. Companies organized abroad for the establishment of banks of any kind within the republic shall subject themselves for effective organization to the provisions of this law and the banks, as well as their shareholders, shall be impressed with the character of Costa Rica citizenship to the extent of being denied the power to invoke the laws of any foreign country in matters relating to the affairs or opera-

tions of such banks; such matters must be decided by the tribunals of Costa Rica and in entire conformity with the laws of the republic.

Article 12. Banks established in the country as branches of foreign banks shall be equally subject to the provisions of the preceding article.

It is doubtful whether these restrictions upon the bank by their terms go so far as to forbid its appeal for diplomatic intervention in protection of its rights. They show clearly that the powers conferred by the government of its origin cannot enlarge its banking powers in Costa Rica and that its rights are to be decided by Costa Rican courts and according to Costa Rican law. But to carry this to a denial of the right to a diplomatic intervention by its own government to avoid legislative nullification of its rights without a hearing would be going far.

It has been held in a number of important arbitrations, and by several foreign secretaries, that such restrictions are not binding upon a home government and will not prevent it from exercising its diplomatic functions to protect its nationals against the annulment of the rights secured to them by the laws of the country in force when the obligations arose. Wharton's *Digest*, II, p. 612, Sect. 230; Moore's *Digest*, III, 307; Ralston's *Report*, I, p. 819; *Am. Foreign Relations*, 1887, p. 99; *American Foreign Relations*, 1902, pp. 870, 871; Moore, *Intern. Arbitrations*, 1644; Ralston, *Intern. Arbitral Law*, p. 48; Borchard, *Diplomatic Protection of Citizens Abroad*, 293.

However this may be, these restrictions upon each claimant would seem to be inapplicable to a case like the present where is involved the obligation of a restored government for the acts or contracts of a usurping government. The courts of the restored government are bound to administer the law of the restored government under its constitution and their decisions are necessarily affected by the limitations of that instrument. This may prevent the courts from giving full effect to international law that may be at variance with the municipal law which under the restored constitution the national courts have to administer. It is obvious that the obligations of a restored government for the acts of the usurping *de facto* government it succeeds cannot, from the international standpoint, be prejudiced by a constitution which, though restored to life, is for purposes of this discussion, exactly as if it were new legislation which was not in force when the obligations arose.

Nor is it an answer to this, to suggest that in the case here under consideration, the restored constitution may be construed not to prevent the Costa Rican courts from giving effect to the principles of international law, already stated. It is enough that the restored constitution is the controlling factor in the exercise of any jurisdiction to be exercised by those courts, and that other nations may object to a tribunal which must give consideration to legislation enacted after the fact, in reaching its decision.

This is not an exceptional instance of an essential difference between the scope and effect of a decision by the highest tribunal of a country and of an international tribunal. The Constitution of the United States makes the

Constitution, laws passed in pursuance thereof, and treaties of the United States the supreme law of the land. Under that provision, a treaty may repeal a statute, and a statute may repeal a treaty. The Supreme Court cannot under the Constitution recognize and enforce rights accruing to aliens under a treaty which Congress has repealed by statute. In an international tribunal, however, the unilateral repeal of a treaty by a statute would not affect the rights arising under it and its judgment would necessarily give effect to the treaty and hold the statute repealing it of no effect.

Another and conclusive answer to this plea in abatement to the jurisdiction here is found in the fact that the provisional government of Barquero, succeeding that of Tinoco, which subsequently and peaceably and in due course merged into the existing government, took away the power of the then courts of Costa Rica to hear the suit of the Royal Bank already instituted, or to entertain any suit involving rights against the government, decreed a moratorium for a year of the claims of this character, and forbade the issue of any mesne or final execution upon the property of the Banco Internacional or of the state in satisfaction of such claims. It is true that all these acts of the provisional government were repudiated by a legislative decree of the present government in August of 1920, some ten months after its accession. This was at a time when the Law of Nullities had already passed Congress and was only delayed by the veto of the President. In a few days it was made into law by its passage over his veto. The Law of Nullities was a legislative decree without any hearing declaring invalid the rights which the bank claimed to have against the Banco Internacional and against the government. It was merely a continuation of the legislative policy begun in different form by the provisional government for defeating these claims.

It is true that the bank might then have continued its litigation and have contested the validity of the Law of Nullities before the courts of Costa Rica, but it would have had to do so before a court that was elected by the same Congress which passed the Law of Nullities, the previous court having been reorganized by the Congress. Without in any way implying a criticism of the new court, or a doubt as to its spirit of judicial inquiry, I think the previous course of the provisional government, the enactment of the Law of Nullities, and the constitutional limitation upon the scope of the decision of Costa Rican courts, already referred to, so changed the situation with respect to the rights of the bank when it began its suit that the restored government must be held to have waived the enforcement of any limitation upon the right of the bank to invoke the protection of its home government under the circumstances.

The same views must apply in favor of the concessionaire under the Amory concession if the restrictions of its concession are to be construed as limiting the power of the concessionaire to invoke diplomatic intervention without a resort to the courts.

A consideration of the issues before us, therefore, recurs to the merits of the two claims. The decision of them must be governed by the answer to the question whether the claims would have been good against the Tinoco government as a government, unaffected by the Law of Nullities, and unaffected by the Costa Rican Constitution of 1871.

It is suggested on behalf of Great Britain that the scope of the arbitration does not involve an examination by the arbitrator into the merits of the claims after the general principles applying to the Law of Nullities and its validity shall have been decided. I cannot yield to this suggestion. The recitals of the treaty show that the demand and claims of Great Britain and of Costa Rica in this arbitration are to be determined from the "notes which His Britannic Majesty's Minister addressed to the Costa Rican Ministry for Foreign Affairs on July 13 and November 8, 1921, and in antecedent correspondence, and on the part of the Costa Rican Government, in their notes in reply relative to the present diplomatic controversy, and especially in the Congressional resolution of the 13th of December of that same year". An examination of these references leaves no doubt that not only was the validity of the Law of Nullities in defeating the claim of the bank and the Amory concession involved, but also the merits of the claim of the bank and of the concession, assuming the Law of Nullities to be itself a nullity.

Coming now to the merits of the Royal Bank claim, the facts, so far as I can gather them from the exhibits and evidence produced by both parties, are:

The Banco Internacional de Costa Rica was established as a bank to be conducted by private persons under the immediate supervision of the executive power, and on October 14, 1914, was given authority to issue notes to the amount of four million colones, in accordance with the banking law of Costa Rica and the amendments thereto. The issue was to be secured by Treasury bonds. This law continued in force under the Tinoco régime. On June 29, 1919, the Chamber of Deputies by law provided that the Banco Internacional should be authorized to make a new issue of notes of 15,000,000 colones. The notes were to be given the same legal tender quality as attached to the bills then in circulation under the law of 1914. Of the sum thus to be issued, ten million colones were to be applied to the interests of the government for its public administration. The remaining amount was to be distributed, 2,500,000 colones to increase the emergency fund and the borrowing capacity of the Banco Internacional de Costa Rica for private loans, 1,500,000 colones to be devoted to rural loans to future farmers, veterans of the army, and 1,000,000 colones to be invested in construction and repair of national roads. All revenues from postal, telegraph and stamped paper sources were pledged to the state to secure this issue. After June, 1920, the principal administration of state revenues was to pay to the bank the total amount derived from the revenues, and the bank was then to devote this amount, taking up and withdrawing from circulation all bills

authorized by the present law and to destroy them. Article VI provided that the government should, after the proclamation of the law, make a deposit in American gold or drafts of the United States in the Banco Internacional, to be operated in the form of a revolving credit, to be used exclusively by the bank to sell bills of exchange to merchants and private persons at a fixed maximum rate of exchange. The executive power was authorized to make rules and regulations necessary for the proper enforcement of the law. On July 10, 1919, the law just described was amended by providing that the bills to be issued should bear a clear statement of their value by means of letters and numbers, together with a statement of the obligation of the bank to pay them at sight to bearer in national gold money, and they were to be issued in the denominations which included a denomination of 1,000 colones. By an order of the President, and because of the absence of the usual forms of colones bills, it was directed on July 10, 1919, that there might be a provisional issue to the value of 2,500,000 colones of "*Bonos sobre especies fiscales*" of the value of 1,000 colones each. These had been bonds prepared for issue but which had not been placed in circulation, and it was directed that they should be known and treated as bills of the Banco Internacional de Costa Rica, and should bear on their left margin the impression of the seal of the Ministry of the Treasury.

On the 16th of July, there was deposited in the Royal Bank of Canada, to the credit of the Costa Rican Government, a check drawn by Jimenez, Minister of the Treasury, against the Banco Internacional de Costa Rica for 1,000,000 colones. On the stub of the check was a memorandum that it was payable in provisional bills of 1,000 colones. The face of the check contained the words "Supreme Government Law No. 12 of June 28, 1919". The check was presented to the Banco Internacional, which accordingly delivered in payment thereof, to the Royal Bank, one thousand 1,000 colones bills of the form above given.

Thereafter the Minister of Finance, after a conversation with the manager of the Royal Bank, in which he explained that the circulation of such irregularly prepared bills might produce confusion, wrote under date of July 17, 1919, as follows:

Dear Sir:

With reference to the deposit made yesterday at your bank for one million (1,000,000) colones in notes of one thousand (1,000) colones each, which you agreed to withhold from circulation, I hereby confirm our verbal agreement, as follows:

That this Ministry will pay interest at the rate of 10 per cent. per annum on the amount of the deposit that is utilized and that before September 15 next, the notes of this deposit will be replaced by current issues.

Yours truly,

FRANKLIN JIMENEZ,
Minister of Finance.

It is alleged on behalf of Great Britain that the Government of Costa Rica then drew against this account for governmental purposes, and that the bank honored the checks, some twenty in number, which exhausted the deposit. Subsequently the Royal Bank succeeded in circulating two of the 1,000 colones notes, receiving their face value, and reducing the amount of notes held by it to 998,000 colones.

Upon these facts rests the claim that the Costa Rican Government and the Banco Internacional must recognize the validity of the thousand colones bank notes still held by the Royal Bank, and make them good, or pay to it the money which it expended in honoring the checks drawn against the million colones deposit for governmental purposes.

The account, showing the ultimate application of the deposit, as presented by Great Britain, from the books of the Royal Bank, is as follows:

1919	Debit	Credit
July 16. To International Bank	C 1,000,000.00	
July 17. For the Royal Bank of Canada Revolving Credit		C 900,000.00
17. To Royal Bank of Canada Revolving Credit	450,000.00	
17. For Public Debt Service		5,000.00
26. For Foreign Relations Dept.		45,000.00
Aug. 2. For War and Police M. Dept.		1,500.00
2. For Royal Bank of Canada Revolving Credit		225,000.00
4. For Bank of Costa Rica Cur. Act.		135,000.00
4. For Bank of Costa Rica Cur. Act.		202.95
4. To purchase of drafts	51,750.00	
4. For War and Police M. Dept.		40,000.00
5. For Bank of Costa Rica Cur. Act.		116,355.17
6. For Bank of Costa Rica Cur. Act.		7,177.50
7. To French Loan Service	26,000.00	
8. For Bank of Costa Rica Cur. Act.		56,000.00
8. To Purchase of Drafts	35,200.00	
9. For Bank of Costa Rica Cur. Act.		18,898.70
13. For Bank of Costa Rica Cur. Act.		1,500.00
Dec. 27. Balance		155.68
	C 1,562,950.00	C 1,562,950.00

In its effort to secure evidence explaining or impeaching this account, Costa Rica filed a demand before a local court in Costa Rica for the production of evidence, including the following:

1. The accounts in American gold and in colones which do now exist or which may have existed in the past in the name of the government of this republic or of the Minister or of the Secretary of the Treasury, and that the entries made both in the ledger and the journal be duly certified.
2. All the accounts which may have any connection with those indicated in the immediately preceding number, and that such entries made both in the ledger and the journal as may be connected with those which are mentioned in No. 1 above, be duly certified.

The agent of the Royal Bank denied the jurisdiction of the court to require their production, but used the following language:

Whether obliged or not to do it the Royal Bank of Canada is ready and willing to produce, as soon as it is ordered to do so, all its accounts and any other documents within its powers which the high arbitrator may need, and it is to be observed that the bank has already sent to its New York office, for the purpose of being presented, in case of need, a part of the documents which have been asked for.

The Costa Rican Government in its counter case says that it "is unwilling to agree to the *ex parte* production of these accounts before the arbitrator, after it is too late for a full discussion of them by the Government of Costa Rica, and also without an opportunity of ascertaining that what is produced is really a full and reliable disclosure of all the transactions, especially in view of their admission, above quoted, that the documents in New York are only 'a part of the documents which have been asked for'".

In its counter case the Government of Costa Rica does present additional accounts between the Royal Bank of Canada and the government, taken from the books of the government entered during the Tinoco régime. This certified account includes not only the account of the Royal Bank of Canada with the government, already introduced, on behalf of the Royal Bank, which is said to appear on the ledger—folio 669 and 691, but also an account on folio 678 and 690, which is as follows:

THE ROYAL BANK OF CANADA REVOLVING CREDIT CURRENT ACCOUNT GOLD			
1919		Debit	Credit
July 5.	To Sundries	\$64,447.95	
7.	For War and Police M. Dept.		\$60,000.00
17.	To Sundries	200,000.00	
17.	For Sundries		100,000.00
Aug. 2.	To Sundries	50,000.00	
2.	To International Bank	50,000.00	
2.	For Foreign Relations Dept.		200,000.00
9.	For Regular Export Duties		
	Sundries		200.00
11.	For Treasury Dept.		4,247.95
		\$364,447.95	\$364,447.95

Then follow journal entries relating to the two foregoing accounts:

Journal entry of July 16th, in explanation of the million dollar colones deposit was as follows:

Entry No. 1538 F		Debit	July 16, 1919. Credit
The Royal Bank of Canada Special Account		C 1,000,000.00	
To International Bank			C 1,000,000.00
Account of check No. A 109755 drawn on the same to the order of the Royal Bank of Canada payable in provisional bills of C 1,000, which shall be exchanged for			

current bills before the 15th of September next as per agreement with the Minister of the Treasury. Interest at 10 per cent. per annum shall be paid to it on the sums which the Minister of the Treasury shall use from the said deposit.

Following that is a journal entry No. 1546 F, as follows:

	Debit	Credit
The Royal Bank of Canada Revolving Credit Account	C 1,000,000.00	
Equivalent in colones at 500 per cent. exchange of \$200,000.00 deposited today in said Bank for the purposes of Article G of Law No. 12 of the 28th of June ultimo.		
To The Royal Bank of Canada		C 900,000.00
Amount of the following checks drawn yesterday from said Bank and from John M. Keith's the \$200,000.00 deposited to the order of the Ministry of the Treasury, upon the reimbursement of the equivalent in colones at 450 per cent. exchange, as per contract with Enrique R. Clare of the 26th of June ultimo.		
No. 79501 to the order of the Royal Bank of Canada	C 742,500.00	
No. 79502 to the order of John M. Keith	157,500.00	
To Pending Accounts		100,000.00
Enrique Clare		
Sum paid to Clare on the 26th of June ultimo, as per the contract above referred to, by check No. A, 109,248 on the International Bank.		

Another journal entry No. 1717 F is as follows:

Entry No. 1717 F	Debit	Credit
Foreign Relations Dept.	C 846,000.00	
Emergency		
Equivalent in colones at 423 per cent. exchange of \$100,000.00 to the order of the Minister of Foreign Relations and \$100,000.00 to the order of Jose Joaquin Tinoco, the former for expenses of representation of the Chief of the State in his approaching trip abroad, and the latter, value of four annuities of salaries and office expenses of the Legation of Costa Rica in Italy which has been put in charge of Mr. Tinoco.		
To the Royal Bank of Canada Current Account in Gold		C 430,000.00
Equivalent at 215 per cent. exchange of \$200,000; amount of the following checks drawn upon the same:		
No. 304 to the order of Jose Joaquin Tinoco	\$100,000.00	
No. 305 to the order of the Minister of Foreign Relations	100,000.00	
To Difference in Exchange		416,000.00
Difference between 423 per cent. and 215 per cent. exchange.		

In addition to this, there is in evidence a letter written by the Manager of the Royal Bank of Canada, under date of July 27, 1921, which further explains the payment of the checks Nos. 304 and 305. It is as follows:

Sir: Referring to your communication dated the 25th instant, I have the pleasure to inform you that cheques numbers 304 and 305 drawn by the Ministry of the Treasury on the 2nd of August, 1919, for \$100,000 each, and against the account of the Government in this Bank, were paid with bills of exchange on the solicitation and to the satisfaction of the bearer of each one of said cheques as follows:

Cheque No. 304 drawn by the Minister of the Treasury (Franklin Jimenez), in favor of Jose Joaquin Tinoco, and dated August 2, 1919, endorsed by Jose Joaquin Tinoco. The cheque was exchanged for \$100,000 in Bill of Exchange on New York; this transaction was effected by Jaime Esquivel as follows:

No.	Date	Against	In favor of	Amount	Paid
5783	Aug. 2, 1919	Royal Bank of Canada, New York	Jaime Esquivel	\$10,000	Sept. 27, 1919
5784	"	"	"	10,000	"
5785	"	"	"	10,000	"
5786	"	"	"	10,000	"
5787	"	"	"	10,000	"
5788	"	"	"	10,000	"
5789	"	"	"	10,000	"
5790	"	"	"	10,000	"
5791	"	"	"	10,000	"
5792	"	"	"	10,000	"

Cheque No. 305 drawn by the Minister of the Treasury (Franklin Jimenez), in favor of the Minister of Foreign Relations, dated August 2, 1919, endorsed by the Minister of Foreign Relations (Guillermo Vargas). This cheque was exchanged for \$100,000 in Bills of Exchange on New York and which transaction was effected by Jaime Esquivel as follows:

No.	Date	Against	In favor of	Amount	Paid
5788	Aug. 2, 1919	Royal Bank of Canada, New York	Frederico Tinoco	\$20,000	Aug. 26, 1919
5781	"	"	"	20,000	Aug. 22, 1919
5782	"	"	"	20,000	Aug. 26, 1919
325131	4	Chase National Bank of New York	"	5,000	Sept. 26, 1919
325132	"	"	"	5,000	Sept. 26, 1919
325133	"	"	"	5,000	Aug. 26, 1919
325134	"	"	"	5,000	Aug. 26, 1919
325135	"	"	"	5,000	Sept. 26, 1919
325136	"	"	"	5,000	Sept. 26, 1919
325137	"	"	"	5,000	Aug. 26, 1919
325138	"	"	"	5,000	Aug. 26, 1919

I am, dear Sir, Very faithfully yours,

The Royal Bank of Canada,
T. J. REARDON, *Manager*.

These accounts taken from the Treasury Department were furnished by Costa Rica to the other side before this arbitration began, so that the Royal Bank has been long advised of their existence and contents. The failure of

the bank to produce any further statements of accounts from its own books in explanation of the accounts thus appearing on the government books not only makes these government accounts competent evidence, but also justifies inferences therefrom in the absence of explanation which the coincidence of dates and the circumstances shown by other evidence make inevitable.

It is evident from the exhibits that in the spring of 1919 the popularity of the Tinoco régime had disappeared, and that the political and military movement to end that régime was gaining strength. Supporters of the former government invaded the northern part of Costa Rica and the Tinoco government found it necessary to suspend the guarantees of personal liberty and establish martial law, beginning early in 1919, for periods of thirty days continuously renewed until its fall in September. The sinking credit of the Tinoco government and the expenses of the maintenance of the army raised in its defense, had produced a stress in its finances which led to the legislation authorizing the issue of the fifteen millions of colones. The emergency was illustrated in the use of the very irregular form of the notes of issue by the Banco Internacional de Costa Rica authorized by the legislation of June and July of 1919, and by a sale of the deposit of silver coin held in reserve by the Bank of Costa Rica, which acted as the national treasury. It became perfectly clear from the mob violence and disturbances in June, and the evidences of the unpopularity of the Tinoco régime, that it was in a critical condition, and an agent of the Royal Bank testifies that the retirement of the Tinocos "was known as a positive thing about to take place when the silver transaction was carried out on the 5th of July, when the account in American gold for the value of the coined silver was opened on the 5th of July, and when the million dollar colones deposit was made on the 16th of July". In the light of these circumstances, it is not difficult to infer from the figures set forth in the foregoing account that there is an identity between the million colones deposit of July 16th and the \$200,000 credit of July 17th to the government in the so-called gold revolving credit account set forth above.

The language of the entry No. 1546 F, of date July 17, 1919, and its reference to Article 6 of Law No. 12, shows that this whole deposit was to be transferred to the Revolving Credit Account Gold of the Royal Bank in the amount of \$200,000. It was accomplished by three checks, one to the order of the Royal Bank itself, one to the order of John M. Keith, and one to the order of Enrique Clare. The account presented by the British Government on behalf of the Royal Bank, lumps first two checks in an item of 900,000 colones, debiting the Royal Bank Revolving Credit Account, thus showing the destination of both. Without explanation, it may be difficult to fix the exact details of this transaction, but the amounts, the dates, and the result leave no doubt in my mind that the deposit of the 1,000,000 on July 16th, the check for 900,000 colones also deposited in the Bank, the credit to the government of \$200,000 on the 17th in the Revolving Credit Current Ac-

count Gold, and the withdrawal of \$200,000 on August 2nd, were all part of the same transaction intended to secure to the two Tinocos the drafts for \$100,000 each, shown by journal entry 1717 F, and by the letter of January 27, 1921, from the Manager of the Royal Bank:

It thus appears that the present claim of the bank rests on its payment of \$200,000 to the Tinocos, \$100,000 to Frederico Tinoco, "for expenses of representation of the Chief of State in his approaching trip abroad", and \$100,000 to Jose Joaquin Tinoco, as Minister of Costa Rica to Italy for four years' salary and expenses of the Legation of Costa Rica in Italy, to which post the latter had been appointed by his brother. The Royal Bank cannot here claim the benefit of the presumptions which might obtain in favor of a bank receiving a deposit in regular course of business and paying it out in the usual way upon checks bearing no indication on their face of their purpose. The whole transaction here was full of irregularities. There was no authority of law, in the first place for making the Royal Bank the depository of a revolving credit fund. The law of June 28th authorized only the Banco Internacional to be made such a depository. The thousand dollar colones bills were most informal and did not comply with the requirements of law as to their form, their signature or their registration. The case of the Royal Bank depends not on the mere form of the transaction but upon the good faith of the bank in the payment of money for the real use of the Costa Rican Government under the Tinoco régime. It must make out its case of actual furnishing of money to the government for its legitimate use. It has not done so. The bank knew that this money was to be used by the retiring president, F. Tinoco, for his personal support after he had taken refuge in a foreign country. It could not hold his own government for the money paid to him for this purpose.

The case of the money paid to the brother, the Secretary of War, and the appointed Minister to Italy, is much the same. The government book entry charges him with this as a payment for expenses to be incurred in the establishment of a legation in Italy. It includes the salaries and expenses for four years. To pay salaries for four years in advance is a most unusual and absurd course of business. All the circumstances should have advised the Royal Bank that this second draft, too, was for personal and not for legitimate government purposes. It must have known that Jose Joaquin Tinoco in the fall of his brother's government, which was pending, could not expect to represent the Costa Rican Government as its Minister to Italy for four years, that the reasons given for the payment of the money were a mere pretense and that it was only, as in the case of his brother Frederico, an abstraction of the money from the public treasury to support a refugee abroad.

The 100,000 colones remaining of the deposit of 1,000,000 colones of July 16th, paid in a check to Enrique R. Clare, as shown by journal entry No. 1546 F of July 17, 1919, is a credit to "Pending Accounts", and is accom-

panied by the memorandum "Sum paid to Clare on the 26th of June ultimo as per the contract above referred to, by check No. A 109,248 on the International Bank". From the memorandum against the credit of 900,000 colones in the same entry this contract seems to have been an arrangement for exchange and may have been the amount needed to transfer the whole 1,000,000 colones deposit into \$200,000 gold. Whatever it was, it is so closely connected with this payment for obviously personal and unlawful uses of the Tinoco brothers that in the absence of any explanation on behalf of the Royal Bank, it cannot now be made the basis of a claim that it was for any legitimate governmental use of the Tinoco government.

The claim of the Royal Bank against the Costa Rican Government has, however, been given a better status than as decided above, to the extent of one-half of it, by the act of the existing Government of Costa Rica in December, 1922. Jose Joaquin Tinoco was killed in the streets of the capital during the disturbance on August 10, 1919, which occurred in protest against the continuance of the Tinoco government. The present Government of Costa Rica prosecuted a suit for \$100,000 against Joaquin Tinoco's estate in a Costa Rican Court, based on the payment by the Royal Bank of this sum to him. The suit was compromised by a mortgage given by his widow upon two estates of his for a full \$100,000, of date December 21, 1922, the same to be paid within five years. The Government of Costa Rica in repudiating any obligation to the Royal Bank for paying \$100,000 to Jose Joaquin Tinoco, of course, deprived itself of any just claim to real ownership of the mortgage upon his estates for that amount. This should enure to the benefit of the Royal Bank. Proceeding in this matter *ex aequo et bono*, therefore, I must hold that the bank is subrogated to the title of Costa Rica in the mortgage and that as a condition of the award against the bank, as to the whole 998,000 colones claimed by it, Costa Rica should transfer and assign the mortgage to the bank for its benefit, together with any interest which may have been meantime collected thereon.

The Amory concession was in the form of a contract between Aguilar, Minister of Public Works, authorized by the President of the Republic, as party of the first part, and Miguel D. Ferrer, as the attorney of John M. Amory and Son, of 52 Broadway, New York, as party of the second part. The Chamber of Deputies of the Tinoco government approved the contract June 26, 1918. The concession is now owned by the Central Costa Rica Petroleum Company, Ltd., of Canada, and all its stock is owned by the British Controlled Oil Fields, Ltd. The concessionaire was given the right during twelve years to prospect or cause to be prospected the territories of the provinces of Cartago, Alajuela, Heredia and San Jose, constituting four of the eight provinces of Costa Rica, comprehending half her territory, in order to find deposits of petroleum, hydrocarbons and allied substances. On his finding them, the concessionaire was granted the exclusive right to locate all of the deposits discovered. At the end of twelve years, any territory

that might remain unexplored, or of which the concessionaire did not present topographical and geographical plans to the government, might be otherwise disposed of by the government for the mining of petroleum, hydrocarbons and allied substances. The concessionaire was granted the exclusive right during fifty years to develop and exploit the deposits located by him; to establish pipe lines and pumping stations; to erect refineries and bore wells; to build aqueducts, roads, railways, transmission lines and all other works necessary for the extracting, warehousing and handling of petroleum and allied substances; to use the national and public highways and the unoccupied land for such purpose; to utilize the rivers, springs, and water courses which may cross the national, municipal or private lands; to install hydraulic or electrical plants required by the company for the generating of electric power for this purpose; to cut and fell timber on national lands free of payment, and stone, slate, lime, clay, and other things that may be necessary for the operation of the enterprise, and to locate and mine such coal deposits as he might discover in his exploration. The enterprise was declared to be a public utility under the protection of the government so as to enable the concessionaire to exercise the right of expropriation for the purpose of the grant. He was given the right to export the petroleum and hydrocarbon products and by-products, or to sell the same within the republic.

The grant was made on condition that the concessionaire should spend \$20,000 American gold in exploration during the first two years, and to deposit \$25,000 in the public treasury to secure this expenditure; invest in the three years following the two years, not less than \$125,000 gold in an investigation and exploitation of the petroleum deposits, and secure this action by the deposit of 40,000 colones in internal bonds of Costa Rica in the treasury at San Jose or in a bank in England or in the United States, and during seven years succeeding the previous five, invest a sum of not less than one million colones, to continue the work of investigation and exploitation, and deposit, as security for this, in the treasury of the republic, or in a bank of England or of the United States, 30,000 colones of the interior debt of Costa Rica; commence explorations within four months; use the best kind of machinery and methods for doing the work; organize a company called the Central Costa Rica Petroleum Company; transfer all the rights of the concessionaire to that company, as well as the obligations of the latter to Costa Rica, and organize the company within four years with a capital paid up of not less than one million dollars in United States currency.

The considerations for this concession are contained in Articles VII, VIII and X.

The concessionaire, by Article VII, agrees to pay 25 cents, American currency, on every ton of crude petroleum or other hydrocarbon products exported or sold in the republic, deducting what he may use in his work of production, refining and transport. By Article VIII he undertakes to sup-

ply gratuitously all fuel and lubricating oil needed to run the present government railways and extensions thereof, provided that the total net output from the petroleum fields shall be at least 1000 tons a day, the storage and transportation to be at the expense of the government. By Article X, it is provided as follows:

With the exception of the oil supplied as provided by Article VIII hereof, the royalty of 25 cents referred to in Article VII, shall be the only tax or duty payable by the concessionaire to the Government of the Republic or to the local governments or municipalities in respect to this concession; but the concessionaire shall not be exempted from any national taxes payable by the public in general at the present rates. The government exempts the concessionaire from the payment of general or partial taxes which may be levied hereafter, unless they be for public services established or conducted by the government and of which the concessionaire shall make regular use, or by which he may directly and permanently benefit.

The first objection to an award in favor of the Amory concession in this proceeding by the British Government, is that it was granted to an American firm and that there is no evidence that British subjects were interested in it until after it had been repudiated, so that they acquire nothing but a law suit. It is urged that Great Britain may not protect her subjects in prosecuting a claim acquired from American owners after it had become the subject of controversy. The British case, presenting the Amory claim separately, says that British capital was engaged in the concession from the first, and that Amory & Son were only agents of a large English Company known as the British Controlled Oil-fields, Limited, and that all the capital has been furnished by that company since the concession was granted and work done under it. No formal proof is made of this. In a letter of the Secretary of State of Costa Rica to a representative of the British Government, of September 29, 1920, he says:

When the Amory contract was being negotiated, assurance was given that the responsible firm was North American and documents presented to the Department of Public Works show that the transfer provided by the contract was made to a concern domiciled in the State of Delaware of the United States of America. In spite of this, and in view of the repeated assertions contained in the notes to which this is a reply, we now have no doubt that a part at least of the capital is English or of English origin, and that the interest that moves you to intervene in the matter is born of that circumstance.

No objection of this kind by Costa Rica was made in the Congressional resolution of the 13th of December, 1921, or, so far as I can discover, in previous correspondence. It appears for the first time in the counter case. Had it been clearly made in previous correspondence, the failure to make proof might have raised the question of law urged, but in view of the admission above and the lack of distinct challenge previous to the counter case, I cannot regard it as substantial.

Nor do I deem it necessary to go in detail into the question of performance. It seems to me that substantially everything was done by the concessionaires or their assignee required by the contract in the way of an advance of one million dollars of capital, of the security to be given, and of considerable expenditure to be made. The accounts show the actual outlay of at least 200,000 colones in exploration in Costa Rica, and of 300,000 colones in importation into the country of machinery and other preparation enough certainly to manifest good faith and to appeal for equitable treatment in case this concession cannot be sustained as a contract.

The most serious objection to the concession is that it was granted by a body without power to grant it. Its validity is, as I have already said, to be determined by the law in existence at the time of its granting; and that means the law of the government of Costa Rica under Tinoco. This concession was granted, with the approval of the President, by the Chamber of Deputies of Costa Rica. By the constitution of June 8, 1917, established under Tinoco, the Government of the Republic was vested in three different powers independent of each other, to be known as the legislative, the executive and the judicial powers. The legislative power was vested in a congress composed of two chambers, one of Senators and the other of Deputies, whose members in both were elected by the citizens and might be reelected indefinitely. By Article 76, the Congress was to meet as a single body and exercise ten powers, which were within its exclusive jurisdiction. The tenth power was as follows:

10. To approve or disapprove laws, fixing, enforcing or changing direct or indirect taxes.

The Chamber of Deputies was given the power to decree the alienation of property of the nation, or the application thereof for public uses; and especially to empower the executive to negotiate loans or to enter into other contracts upon mortgage security of the national revenue. The Senate was given the power to approve or disapprove the loan contracts which might be entered outside of the country, after the contract had been approved by the Chamber of Deputies; to approve or disapprove the contracts which the government might enter into, when on account of the nature and importance of the subject matter the executive power of the Chamber of Deputies, at the request of one-third of the members present, considered necessary the sanction of the Senate.

It is contended that this concession is a contract which the Chamber of Deputies might validly make and bind the government unless the executive or one-third of the members present should consider the sanction of the Senate necessary, and that as neither the executive power nor one-third of the votes of the members of the Chamber indicated its view that the sanction of the Senate was necessary to this concession, it was valid.

The recital of the concession shows that an important part of it dealt

with the future taxes to be paid by the concessionaire and made very especial provision in reference thereto. He was to pay a revenue tax of 25 cents United States currency on every ton of crude petroleum to be exported from Costa Rica or sold within its limits. This was called a revenue tax. In addition to this the concessionaire undertook to supply the government with combustible and lubricating oil for the existing railways or for any extension within the provinces named, if the product of the enterprise was not less than 1000 tons per day within a given period. Article X limited the taxes to be paid to the royalty of 25 per cent. and exempted the company from the payment of taxes to local governments or municipalities, and from all national taxes except those payable by the public in general at the rates existing at the time of the concession. It exempted the concessionaire from the payment of other general or partial taxes levied thereafter unless they were for public benefits furnished by the government of which the concessionaire should make regular use, or by which he might directly or indirectly benefit, *i.e.*, unless they were special assessments for actual benefits. Considering the very heavy burden to which but for these exemptions the company might have been subjected in the event of successful exploitation, they were a valuable part of the concession. It is evident that it was the hope and expectation of both parties that oil would be discovered and that upon its discovery the company would develop a large production, refining and transmission of oil, involving the expenditure of large capital and the investing of it in plants of millions of value. The protection which these clauses afforded against the heavy reduction of dividends by increased future taxes, was one of the great factors of value in the contract. It seems to be impossible to escape the conclusion that the power to grant such exemptions and to limit future taxation could only be exercised under the constitution of 1917 by Congress in a single body. The granting of this concession certainly involved the power to approve laws fixing, enforcing or changing direct or indirect taxes. As the Chamber of Deputies was expressly excluded from exercising this power alone, Article X was invalid.

It is urged that under the practical construction of the Tinoco constitution, the Chamber of Deputies did grant tax exemptions and five instances are cited from the official *Gazette* to show this. These were cases in which the customs duty on machinery introduced into the country was waived. They could hardly be held to amount to an amendment of the fundamental law by practice, or such a construction of it as to justify an exception by the Chamber of Deputies of *ad valorem* taxation, general and local, on the plant and property of the concessionaire for fifty years. My conclusion is supported by the action of President Tinoco himself in vetoing a law granting future exemptions from taxation to an insurance company enacted by the Senate, on the ground that only the Congress as a single body could grant them under its exclusive power to fix, enforce, or change direct or indirect taxes.

It is impossible to reject the Article X and hold the remainder of the concession valid. That article is too vital an element in its value. The contract cannot be made over by this tribunal for the parties.

The result is that the government of Tinoco itself could have defeated this concession on the ground of a lack of power in the Chamber of Deputies to approve it.

It is finally contended that the present Government of Costa Rica has recognized the Amory concession and thus given it validity. The argument rests upon correspondence between the attorney for the concessionaire and the Minister of Finance and Commerce in 1919 and 1920, in which the concessionaire was permitted to bring in certain machinery, duty free, for the exploration under the concession. Such permission was given but it was accompanied with the express reservation that the permission should not ratify the concession or affect the right of the government to declare a nullification of the franchises if deemed convenient.

My award, therefore, is that the Law of Nullities in its operation upon the validity of the 998 one thousand colones bills and the claim in behalf of the Royal Bank, will work no injury of which Great Britain can complain, if Costa Rica assigns all her interest in the mortgage for \$100,000 upon Jose Joaquin Tinoco's estate executed by his widow, together with all interest paid thereon to the Royal Bank, and that, upon Costa Rica's executing this assignment and delivering the mortgage, the Royal Bank should deliver to the Government of Costa Rica the 998 one thousand colones bills held by it.

My award further is that the Law of Nullities in decreeing the invalidity of the Amory concession worked no injury to the Central Costa Rica Petroleum Company, Ltd., the assignee of the concession, and the British Controlled Oil Fields, Ltd., its sole stockholder, of which Great Britain can complain, because the concession was in fact invalid under the Constitution of 1917.

Article one of the treaty, under which this arbitration proceeds, provides that "the arbitrator shall determine what one party may owe the other for the expenses of the claim, and decide with regard to the payment of the expenses of the arbitration". Under the award, which is partly in favor of one and partly in favor of the other, I think it fair to require that each party pay its own expenses in maintaining its claims.

So far as the payment of the expenses of the arbitration is concerned, I know of none for me to fix. Personally, it gives me pleasure to contribute my service in the consideration, discussion and decision of the questions presented. I am glad to have the opportunity of manifesting my intense interest in the promotion of the judicial settlement of international disputes, and accept as full reward for any service I may have rendered, the honor of being chosen to decide these important issues between the high contracting parties.

MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY¹

ADMINISTRATIVE DECISION No. I

Dealing with the Liabilities of Germany on all Claims (save those expressly excepted) asserted by the United States in behalf of its Nationals

NOVEMBER 1, 1923

PARKER, Umpire, rendered the decision of the Commission, the American Commissioner and the German Commissioner being unable to agree:

As used herein the following terms shall be taken to have the meaning indicated below:

United States: the United States of America, and/or the Government of the United States of America;

Germany: the German Empire, and/or the Government of Germany;

Germany or her allies: the German Empire or the Austro-Hungarian Empire, Bulgaria, and/or Turkey;

War period: the period between August 1, 1914, and July 2, 1921, both inclusive, the latter date being that on which the joint resolution passed by the Congress of the United States declaring the war at an end became effective;

Period of neutrality: the period between August 1, 1914, and April 5, 1917, both inclusive;

Period of belligerency: the period between April 6, 1917, and July 2, 1921, both inclusive, the former date being that on which the joint resolution declaring a state of war to exist between Germany and the United States became effective;

American national: a person wheresoever domiciled owing permanent allegiance to the United States of America;

Treaty of Berlin: the treaty between the United States and Germany signed at Berlin August 25, 1921, restoring the friendly relations existing between the two nations prior to the outbreak of war;

Agreement: the agreement between the United States and Germany signed at Berlin August 10, 1922, entered into in pursuance of the Treaty of Berlin, providing for the creation of this Mixed Commission.

There are expressly excepted from this decision (1) claims of the United States as such against Germany, (2) claims based on debts owing to American nationals by Germany or by German nationals, and (3) claims arising out of the application of either exceptional war measures or measures of transfer as defined in paragraph 3 of the Annex to Section IV of Part X of the Treaty of

¹ Established in pursuance of the agreement between the United States and Germany of August 10, 1922. EDWIN B. PARKER, Umpire; CHANDLER P. ANDERSON, American Commissioner; WILHELM KIESSELBACH, German Commissioner; ROBERT W. BONYNGE, American Agent; KARL VON LEWINSKI, German Agent.

Versailles. These three excepted classes of claims (hereinafter referred to as "excepted claims") have not been referred to the Umpire for decision by the National Commissioners.

The financial obligations of Germany to the United States arising under the Treaty of Berlin on claims other than excepted claims, put forward by the United States on behalf of its nationals, embrace:

(A) all losses, damages, or injuries to them, including losses, damages, or injuries to their property wherever situated, suffered directly or indirectly during the war period, caused by acts of Germany or her agents in the prosecution of the war, provided, however, that during the period of belligerency damages with respect to injuries to and death of persons, other than prisoners of war, shall be limited to injuries to and death of civilians; and also

(B) all damages suffered by American nationals during the period of belligerency caused by:

(1) GERMANY through any kind of maltreatment of prisoners of war;

(2) GERMANY OR HER ALLIES and falling within the following categories:

(a) damage wherever arising to civilian victims of acts of cruelty, violence, or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment, or evacuation, of exposure at sea, or of being forced to labor), and to the surviving dependents of such victims;

(b) damage, in territory of Germany or her allies or in occupied or invaded territory, to civilian victims of all acts injurious to health or capacity to work, or to honor, and to the surviving dependents of such victims;

(c) damage to civilians by being forced to labor without just remuneration;

(d) damage in the form of levies, fines, and other similar exactions imposed upon the civilian population;

(e) damage in respect of all property (with the exception of naval and military works or materials) wherever situated, which has been carried off, seized, injured, or destroyed, on land, on sea, or from the air;

(3) ANY BELLIGERENT and falling within the following categories:

(a) damage directly in consequence of hostilities or of any operations of war in respect of all property (with the exception of naval and military works or materials) wherever situated;

(b) damage wherever arising to injured persons and to surviving dependents by personal injury to or death of civilians caused by acts of war, including bombardments or other attacks on land, on sea, or from the air, and all the direct consequences thereof, and of all operations of war.

The American Agent and the German Agent and their respective counsel will be governed by this decision in the preparation and presentation of all cases.

Done at Washington November 1, 1923.

Concurring:

EDWIN B. PARKER, *Umpire*.

CHANDLER P. ANDERSON,
American Commissioner.

ADMINISTRATIVE DECISION No. II

Dealing with the Functions of the Commission and Announcing Fundamental Rules of Decision

NOVEMBER 1, 1923

PARKER, *Umpire*, delivered the opinion of the Commission, the American Commissioner and the German Commissioner concurring in the conclusions:

For the guidance of the American Agent and the German Agent and their respective counsel there are here set down some of the basic principles which will, so far as applicable, control the preparation, presentation, and decision of all cases submitted to the Commission. Reference is made to Administrative Decision No. I for the definition of terms used herein.

Functions of Commission.—This Commission was established and exists in pursuance of the terms of the Agreement between the United States and Germany dated August 10, 1922. Here are found the source of, and limitations upon, the Commission's powers and jurisdiction in the discharge of its task of determining the amount to be paid by Germany in satisfaction of her financial obligations to the United States and to American nationals under the Treaty of Berlin. Article I of the Agreement provides that:

The commission shall pass upon the following categories of claims which are more particularly defined in the Treaty of August 25, 1921, and in the Treaty of Versailles:

(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

(3) Debts owing to American citizens by the German Government or by German nationals.

The financial obligations of Germany which this Commission is empowered to determine arise out of claims presented by the United States falling within the several categories specified in the Agreement and more particularly defined or described in the Treaty of Berlin. For this more particular definition as applied to claims (other than excepted claims) against Germany asserted by the United States on behalf of its nationals reference is made to the decision of the umpire as embraced in the Commission's Administrative Decision No. I.

The Commission is not concerned with the Treaty of Versailles as such, but only with those of its provisions which have been incorporated by reference into the Treaty of Berlin. While for convenient designation reference will be made herein to the Treaty of Versailles, it will be under-

stood (unless the context plainly indicates the contrary) that such reference is to such of the provisions of the Treaty of Versailles as constitute a part of the Treaty of Berlin.

The machinery provided by the Treaty of Versailles and the rules and methods of procedure thereunder governing the disposition of claims may be applied by but are not binding on this Commission.

It does not, of course, follow that every "claim" presented to the Commission constitutes a "financial obligation" of Germany. The American Agent pursues the policy of giving American nationals the benefit of every doubt and presents all claims that are not frivolous. Therefore at the threshold of the consideration of each claim is presented the question of jurisdiction, which obviously the Commission must determine preliminarily to fixing the amount of Germany's financial obligations, if any, in each case.²

When the allegations in a petition or memorial presented by the United States bring a claim within the terms of the treaty, the jurisdiction of the Commission attaches. If these allegations are controverted in whole or in part by Germany, the issue thus made must be decided by the Commission. Should the Commission so decide such issue that the claim does not fall within the terms of the treaty, it will be dismissed for lack of jurisdiction. But if such issue be so decided that the claim does fall within the terms of the treaty, then the Commission will prescribe the measure of damages, apply such measure to the facts in the particular case as the Commission may find them, and fix the financial obligation of Germany therein. The Commission's task is to apply the terms of the Treaty of Berlin to each case presented, decide those which it holds are within its jurisdiction, and dismiss all others.

The Commission is not concerned with the *payment* by Germany of its financial obligations arising under the treaty. Its task is confined solely to fixing the amount of such financial obligations.

Principles governing Commission.—In its adjudications the Commission will be controlled by the terms of the Treaty of Berlin. Where no appli-

² *History and Digest of the International Arbitrations to which the United States Has Been a Party*, by John Bassett Moore, 1898 (hereinafter cited as "Moore's Arbitrations"): Volume I, pages 324-327, Volume III, Chapter LII, pages 2277-2312, and page 2599; *International Law Chiefly as Interpreted and Applied by the United States*, by Charles Cheney Hyde, 1922 (hereinafter cited as "Hyde"), section 577 (Volume II, page 153) and authorities cited in notes; *Papers Relating to the Foreign Relations of the United States*, 1895, Part I, pages 83-84, letter from Mr. Olney, Secretary of State, to Mr. Gana, Minister of Chile, June 28, 1895; discussion of the right of a commission to pass upon its own jurisdiction in *International Arbitral Law and Procedure* by Jackson H. Ralston, 1910 (hereinafter cited as "Ralston"), sections 26-30, inclusive; *Comegys and Pettit v. Vasse*, 1828, 1 Peters (26 U. S.) 193, 212-213; *The Diplomatic Protection of Citizens Abroad or The Law of International Claims*, by Edwin M. Borchard, 1915 (1922) (hereinafter cited as "Borchard"), section 191; *A Digest of International Law*, by John Bassett Moore, 1905 (hereinafter cited as "Moore's Digest"), Volume VII, section 1073.

cable provision is found in that instrument, in determining the measure of damages the Commission may apply:³

(a) International conventions, whether general or particular, establishing rules expressly recognized by the United States and Germany;

(b) International custom, as evidence of a general practice accepted as law;

(c) Rules of law common to the United States and Germany established by either statutes or judicial decisions;

(d) The general principles of law recognized by civilized nations;

(e) Judicial decisions and the teachings of the most highly qualified publicists of all nations, as subsidiary means for the determination of rules of law; but

(f) The Commission will not be bound by any particular code or rules of law but shall be guided by justice, equity, and good faith.

The United States is claimant.—Though conducted in behalf of their respective citizens, governments are the real parties to international arbitrations.⁴ All claims, therefore, presented to this Commission shall be asserted and controlled by the United States as claimant, either on its own behalf or on behalf of one or more of its nationals. If in the decisions, opinions, and proceedings of the Commission American nationals are referred to as claimants it will be understood that this is for the purpose of convenient designation and that the Government of the United States is the actual claimant.

Original and continuous ownership of claim.—In order to bring a claim (other than a Government claim) within the jurisdiction of this Commission, the loss must have been suffered by an American national, and the claim for such loss must have since continued in American ownership.⁵

³ Article 38 of the Statute for the Permanent Court of International Justice, 1920, Proceedings of the American Society of International Law, 1920, page 65; *International Law*, by L. Oppenheim, 3rd edition, 1920 (hereinafter cited as "Oppenheim"), Volume II, section 15, page 19; *The Rights of War and Peace*, by Hugo Grotius, Whewell translation, 1853 (hereinafter cited as "Grotius"), Book III, Chapter XX, sections 46-48; Hyde, section 559; II Moore's *Arbitrations*, page 1226; *Venezuelan Arbitrations of 1903*, report by Jackson H. Ralston, 1904 (hereinafter cited as "Venezuelan Arbitrations 1903"), opinion of Umpire Plumley in Aroa Mines (Limited) Case before British-Venezuelan Mixed Claims Commission, pages 386-387; Eldredge's Case before American-Peruvian Mixed Commission of 1863, IV Moore's *Arbitrations*, page 3462; Cadiz Case before United States and Venezuelan Commission, 1885, IV Moore's *Arbitrations*, page 4203.

⁴ *La Abra Silver Mining Company v. Frelinghuysen*, 1884, 110 U. S. 63, 71-72; Hyde, section 273; Ralston, section 201; Borchard, sections 139, 140, 145, 146, 147, and 152; VI Moore's *Digest*, sections 973-978.

⁵ III Moore's *Arbitrations*: *Morrison v. Mexico*, 1850, page 2325; *Young's case*, 1851, page 2752; *Wiltz v. United States*, 1882, page 2254; *Abbiatti v. Venezuela*, 1885, pages 2347-2348. Borchard, sections 306-310; Ralston, sections 220-226; VI Moore's *Digest*, sections 979 and 981; *Burthe v. Denis*, 1890, 133 U. S. 514; *Venezuelan Arbitrations 1903*: British-Venezuelan Mixed Claims Commission, Plumley, Umpire, *Stevenson Case*, pages

The enquiry is: Was the United States, which is the claimant, injured through injury to its national? It was not so injured where the injured person was at the time of suffering the injury a citizen of another state. While naturalization transfers allegiance, it does not carry with it existing state obligations. Any other rule would convert a nation into a claim agent in behalf of those availing of its naturalization laws to become its citizens after suffering injury.⁶

Apportionment of awards amongst claimants.—As above stated, it is the province of this Commission to adjudicate claims presented by the United States, on its own behalf and on behalf of its nationals, against Germany falling within the several categories defined or described in the Treaty of Berlin.

The primary purpose of such adjudication is to determine the amount of Germany's financial obligations to the United States under the treaty.⁷ Obviously, Germany is concerned only with the amount of her obligations and not with any distribution which may be made by the United States of such amount when paid. But both Governments are directly interested in, and this Commission in passing upon its jurisdiction must determine, the ownership of each claim at and since its inception.

In that class of claims where two or more are joined as claimants in one case because their respective causes of action are based upon a single occurrence, and where their demands are several rather than joint, this Commission must, after disposing of all jurisdictional questions, determine how much *each* claimant is entitled to recover before the aggregate amount of the award in that case can be fixed.

To illustrate: Claims growing out of injuries resulting in death are not asserted on behalf of the *estate* of the deceased, the award to be distributed according to the provisions of a will or any other fixed or arbitrary basis. The right to recover rests on the direct personal loss, if any, suffered by each of the claimants. All issues with respect to parties entitled to recover, as well as issues involving the measure of damages, are determined, not by the law of the domicile of the deceased, but in private or municipal jurisprudence

438, 442-455; Italian-Venezuelan Mixed Claims Commission, Ralston, Umpire, Brignone Case, pages 710, 720, Miliani Case, pages 754, 759-762; Corvaia Case, pages 782, 809, Poggioli Case, pages 847, 866.

The language of the Treaty of Berlin does not bring a claim which America is presenting on behalf of its nationals within the exception to the general rule announced by Barge, Umpire, in the Orinoco Steamship Company Case, Venezuelan Arbitrations 1903, at pages 84-85.

⁶ The rule here laid down will not preclude the presentation by the American Agent and the consideration by this Commission of the claims, if any, of citizens of the Virgin Islands and others similarly situated, who, after suffering damages through the act of Germany or her agents, became American nationals through the acquisition of territory by the United States and not on their own initiative.

⁷ See Preamble to Agreement; *Frelinghuysen v. United States*, 1884, 110 U. S. 63.

by the law of the place where the tort was committed⁸—here by the law of nations and the application of the governing principles above announced. The rules for measuring the damages suffered by each claimant are the same. But those rules must be separately applied to the circumstances and conditions, not only of the deceased but of each claimant as well, to arrive at the *quantum* of damages suffered by each claimant. This process necessarily involves a determination of the amount to be awarded each claimant rather than the aggregate amount of Germany's liability for the loss of a life. The problem in such cases is, not to distribute a given amount assessed against Germany amongst several persons, but to assess separately the damages suffered by each of such persons who jointly present independent claims. This the Commission will do.

In so doing we are mindful of expressions used in the opinions of the Supreme Court of the United States to the effect that one claiming an award made by an international tribunal in favor of another is bound by the decision of such tribunal as to the validity of the claim and the amount of the award *but not as to the ownership thereof*.⁹

The suggestion that under the rule announced by these authorities this Commission is without jurisdiction to apportion its awards amongst several joined as claimants in one case is due to a misapprehension of the exact point decided. These authorities deal not with the *original* claimants' *primary right to recover* but with conflicts over asserted rights to *receive payment* arising (1) between the original claimants and those claiming under them or (2) between two or more whose rights are derivative, not original, claiming through assignments or transfers, voluntary or involuntary, from the orig-

⁸ *Spokane and Inland Empire Railroad Company v. Whitley*, 1915, 237 U. S. 487, 495, opinion by Mr. Justice Hughes; *Northern Pacific Railroad Company v. Babcock*, 1894, 154 U. S. 190, 197-199, opinion by Mr. Justice White; *American Banana Company v. United Fruit Company*, 1909, 213 U. S. 347, 356, opinion by Mr. Justice Holmes; Story on *Conflict of Laws*, 7th edition, 1872, section 307; Wharton on *Conflict of Laws*, 3rd edition, 1905, section 478.

⁹ See *Comegys and Pettit v. Yasse*, 1828, 1 Peters (26 U. S.) 193, 212; *Frevall v. Bache*, 1840, 14 Peters (39 U. S.) 95, 97; *Judson v. Corcoran*, 1855, 17 Howard (58 U. S.) 612, 614; *Phelps v. McDonald*, 1879, 99 U. S. (9 Otto) 298, 307; *Frelinghuysen v. Key*, 1884, 110 U. S. 63, 71; *Leonard v. Nye*, 1878, 125 Massachusetts 455, 466; *Brooks v. Ahrens*, 1888, 68 Maryland 212, 221; *Heard v. Sturgis*, 1888, 146 Massachusetts 545, 547, and (*Williams v. Heard*, 1891) 140 U. S. 529, 539-540; *Kingsbury v. Mattocks*, 1889, 81 Maine 310, 315; *Taft v. Marsily*, 1890, 120 New York 474, 477.

It is worthy of note that in the first three of these cases the court was construing the powers not of mixed arbitral tribunals, but of American commissions created under Acts of Congress to distribute a lump sum paid to or held by the United States under treaties between the United States on the one part and Spain, France, and Mexico, respectively, on the other. It is also worthy of note that in none of these cases was there any question of the commission's jurisdiction involved, and in each of them the Supreme Court held that the particular claimant to whom the commission's award was made was entitled to receive payment. The question, therefore, as to the commission's jurisdiction to make the award did not affect the result in any one of these cases.

inal claimants. All of the authorities cited in effect recognize the exclusive and final power of international arbitral tribunals to determine *in whom* a cause of action originally vests, as well as to determine all other questions involving its validity and the amount recoverable. They hold that these are issues to be decided by the international tribunal according to the law of nations, *but* that all questions involving the transfer of interest from and through the original owner must be decided by municipal tribunals according to local jurisprudence.

To this rule we unqualifiedly subscribe.¹⁰ But it does not relieve us of the duty of deciding the amount which shall be awarded to each of two or more who join in asserting in any one case their claims, not joint but several in their nature, and whose rights to recover and the amount recoverable depend on the terms of the treaty and the rules of applicable international law.

Losses suffered directly or indirectly.—Numerous counsel pressing claims of American nationals presented by the American Agent urge in substance that under section 5 of the resolution of Congress and also under Article 231 of the Treaty of Versailles, both carried into and made a part of the Treaty of Berlin, Germany is, during the entire war period, (in the language of one of the American counsel) "responsible for all damage or loss in consequence of the war, no matter what act or whose act was the immediate cause of the injury". This contention is rejected.

From the decision of the Umpire set forth in Administrative Decision No. I, handed down this day, it is apparent that during the period of belligerency Germany is liable for damages suffered by American nationals caused by Germany's allies or by any belligerent when the damages fall within defined categories enumerated under division (B) of that decision. But leaving out of consideration claims falling within these defined categories, Germany's liability for losses sustained by American nationals falling within the provisions of division (A) of Administrative Decision No. I is limited to losses "caused by acts of Germany or her agents". The applicable provisions of Administrative Decision No. I are for convenience reproduced as follows:

The financial obligations of Germany to the United States arising under the Treaty of Berlin on claims other than excepted claims, put forward by the United States on behalf of its nationals, embrace:

(A) all losses, damages, or injuries to them, including losses, damages, or injuries to their property wherever situated, suffered directly or indirectly during the war period, caused by acts of Germany or her agents in the prosecution of the war, provided, however, that during the period of belligerency damages with respect to injuries to and death of persons, other than prisoners of war, shall be limited to injuries to and death of civilians.

The contentions and arguments pressed by American counsel which are here rejected will be examined in the light of the provisions of the decision

¹⁰ Grotius, Book III, Chapter XX, Section 48.

above quoted and also in the light of the provisions of section 5 of the joint resolution of Congress and Article 231 of the Treaty of Versailles.

Much stress is laid by American counsel upon the provisions of section 5 of the resolution of Congress and particularly upon the language italicized in the succeeding sentence. That section, among other things, provides in substance that the United States shall retain (unless otherwise theretofore or thereafter expressly provided by law) all property of Germany or its nationals or the proceeds thereof held by the United States or any of its officers, agents, or employees from any source or by any agency whatsoever, until such time as Germany shall have made "suitable provision for the satisfaction of all claims against" Germany of American nationals who have since July 31, 1914, "suffered, through the acts of the Imperial German Government, or its agents, . . . loss, damage, or injury to their persons or property, *directly or indirectly*, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, *or in consequence of hostilities or of any operations of war, or otherwise*". Examining this language to ascertain what claims are embraced within its terms, it appears that such nationals must have suffered:

- A. (Cause?) through the acts of Germany or its agents;
- B. (When ?) between August 1, 1914, and July 2, 1921, both inclusive;
- C. (What ?) loss, damage, or injury to their persons or property
 - (1) directly or
 - (2) indirectly, whether
 - (a) through the ownership of shares of stock in any domestic or foreign corporation;
 - (b) in consequence of hostilities or
 - (c) of any operations of war, or
 - (d) otherwise.

The proximate *cause* of the loss must have been in legal contemplation the act of Germany. The proximate *result* or *consequence* of *that act* must have been the loss, damage, or injury suffered. The *capacity* in which the American national suffered—whether the act *operated* directly on him, or indirectly as a stockholder *or otherwise*, whether the subjective nature of the loss was direct or indirect—is immaterial, but the *cause* of his suffering must have been the act of Germany or its agents. This is but an application of the familiar rule of proximate cause—a rule of general application both in private and public law—which clearly the parties to the treaty had no intention of abrogating. It matters not whether the loss be directly or indirectly sustained so long as there is a clear, unbroken connection between Germany's act and the loss complained of. It matters not how many links there may be in the chain of causation connecting Germany's act with the loss sustained, provided there is no break in the chain and the loss can be clearly, unmistakably, and definitely traced, link by link, to Germany's act. But the law can not consider, the Congress of the United States in adopting

its resolution did not consider, the parties in negotiating the treaty of Berlin did not consider or expect this tribunal to consider, the "causes of causes and their impulsion one on another."¹¹ Where the loss is far removed in causal sequence from the act complained of, it is not competent for this tribunal to seek to unravel a tangled network of causes and of effects, or follow, through a baffling labyrinth of confused thought, numerous disconnected and collateral chains, in order to link Germany with a particular loss. All indirect losses are covered, provided only that in legal contemplation Germany's act was the efficient and proximate cause and source from which they flowed. The simple test to be applied in all cases is: has an American national proven a loss suffered by him, susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss attributable to Germany's act as a proximate cause?

It follows from the analysis of section 5 of the resolution of Congress that the contention of American counsel, based on the provisions of that section, must be rejected. The argument, pressed to its logical conclusion, would fix liability on Germany for all increased living costs, increased income and profits taxes, increased railroad fares and freights, increased ocean freights, losses suffered through the Russian revolution—in a word, for *all* costs or consequences of the war, direct or remote, to the extent that such costs were paid or losses suffered by American nationals. Going one step further, if there be applied to the word "otherwise" found in section 5 of the resolution as a part of the phrase "or in consequence of hostilities or of any operations of war, or otherwise" the same rules of construction as American counsel applies to the balance of that phrase, then it would follow that Germany is liable for all losses of every nature, no matter if the cause was entirely foreign to the war, wheresoever and howsoever suffered by American nationals since July 31, 1914. The mere statement of the extreme lengths to which the interpretation we are asked to adopt carries us demonstrates its unsoundness.

Neither can the argument of American counsel find support by a resort to the provisions of Article 231 of the Versailles Treaty, the first article of the reparation clauses of that treaty. That article provides that:

The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

But Article 232 provides that:

The Allied and Associated Governments recognize that the resources of Germany are not adequate . . . to make complete reparation for all such loss and damage.

The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage

¹¹ Lord Bacon's *Maxims of the Law*.

done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by such aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto.

Annex I provides that "Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following categories". Then follows an enumeration of ten categories, including three, numbered 5, 6, and 7, which deal with reimbursement to the Government of the United States as such of the cost of pensions and separation allowances, rather than damages suffered by the "civilian population". The Government of the United States has expressly committed itself not to press against Germany the claims arising under these three categories and no such claims are before this Commission.¹²

It is manifest that Article 231 is qualified and limited by the provisions of Article 232 and the Annex I pertaining thereto, which in express terms recognize the inadequacy of Germany's resources to make complete reparation for all loss and damage suffered as a consequence of the war and limit the obligation of Germany to making compensation to the civilian population of the Allied and Associated Powers for such damages as fall within the terms of Article 232 and Annex I. Clearly the United States is not in a position to base a claim on an isolated provision of the treaty without reading it in connection with all related provisions to ascertain its meaning and intent. Especially is this true in view of the second paragraph of sub-

¹² When the treaty of Berlin was before the Senate of the United States, Senator Walsh of Montana moved to strike from it these provisions obligating Germany to reimburse the United States for pension and separation allowances paid by the latter. He said, *inter alia* (page 6367, Volume 61, *Congressional Record*), "at the conference of Versailles an insistent demand was made by certain of the Allies to exact compensation of Germany for all damages occasioned by the war; and . . . after the debate progressed before the Versailles conference, the contention was finally abandoned by every one of them, and it was agreed that the compensation to be exacted of Germany should be limited to the damage which was done to the civilian population. . . . I challenged anyone to attempt to defend pensions and separation allowances as damages done to the civilian population, and no one has attempted so to defend them."

At this point Senator Shortridge, of California, asked Senator Walsh in substance if he feared or thought that the United States, "by whomsoever guided or directed," will ever make a demand on Germany for the payment of pensions and separation allowances, in effect expressing the opinion that such a contingency was so remote as to make of no consequence the objection of Senator Walsh to the treaty as it stood. This opinion expressed by Senator Shortridge, which was not challenged and which, as appears from the debates, expressed the view held by the Senate, was fully justified when the President of the United States authorized the statement that he had no intention of pressing against Germany or presenting to this Commission any claims falling within paragraphs 5, 6, and 7 of Annex I to Section I of Part VIII of the treaty of Versailles. See exchange of notes between Chancellor Wirth and Ambassador Houghton of August 10, 1922, printed in connection with the agreement between the United States and Germany providing for the creation of this Commission and submitted to the Congress of the United States, Treaty Series 665.

division (1) of Article II of the Treaty of Berlin, which provides that the United States in availing itself of the rights and advantages stipulated for its benefit in the provisions of the Versailles Treaty read by reference into the Treaty of Berlin "will do so in a manner consistent with the rights accorded to Germany under such provisions."

Article 231 of the Versailles Treaty at most amounts to no more than an acceptance by Germany of the affirmance by the Allied and Associated Governments of Germany's responsibility for all loss and damage suffered as a consequence of the war—a *moral responsibility*. Germany's *financial responsibility* for losses occurring during belligerency is limited and clearly defined in the succeeding article and the annex pertaining thereto and other provisions of the treaty.

Applying the rule of proximate cause to the provisions of Administrative Decision No. I, no difficulty should be experienced in determining what claims fall within its terms.

Done at Washington November 1, 1923.

EDWIN B. PARKER, *Umpire*.

Concurring in the conclusions:

CHANDLER P. ANDERSON,
American Commissioner.

W. KIESSELBACH,
German Commissioner.

IN THE MATTER OF THE CESSIONS BY GERMANY TO CZECHO-SLOVAKIA UNDER
ARTICLE 339 OF THE TREATY OF VERSAILLES

Walker D. Hines, Arbitrator

Decided, Paris, June 14, 1921

Article 339 of the Treaty of Versailles provides that Germany shall cede to the Allied and Associated Powers concerned certain property pertaining to navigation on certain river systems specified in Article 331 of the treaty. Article 339 provides that the amount and specifications of such cessions shall be determined by an arbitrator or arbitrators appointed by the United States of America. The undersigned, Walker D. Hines, has been appointed accordingly as the Arbitrator for the purpose of Article 339.

One of the river systems specified in Article 331 is the river system of the Elbe. Czecho-Slovakia claims that by virtue of Article 339 it is entitled to cessions of property pertaining to navigation on the Elbe.

Czecho-Slovakia and Germany, respectively, have designated delegates to appear before the Arbitrator, and he has received and considered the various notes presented by the respective delegates, and has held numerous hearings which were attended by these delegates.

THE RIGHT OF CZECHO-SLOVAKIA TO RECEIVE CESSIONS OF BOATS AND OTHER MATERIAL ON THE ELBE UNDER ARTICLE 339 OF THE TREATY OF VERSAILLES

The German Delegation urges that Czecho-Slovakia has no right to receive cessions of boats and other material on the Elbe. The position of the German Delegation is that the purpose of Article 339 was to provide for a cession of boats and other material only in cases where the Treaty of Versailles had brought about territorial changes; that in respect of the Elbe the treaty had made no territorial changes affecting Germany, and, therefore, it was not the purpose of Article 339 to impose upon Germany the obligation of making to Czecho-Slovakia any cessions of Elbe navigation material. The German Delegation urged that its position was illustrated by Article 357, which required cessions to be made to France because of the fact that the Treaty of Versailles had caused a territorial change through the restoration of Alsace-Lorraine to France.

The Arbitrator is of the opinion that Article 339 in its literal meaning embraces Czecho-Slovakia in respect of the Elbe, because Czecho-Slovakia by reason of its location upon the Elbe is a power directly concerned in the navigation of that stream. The concern of Czecho-Slovakia in the navigation of the Elbe is further recognized by Article 363 of the treaty, which gives Czecho-Slovakia a free zone for ninety-nine years in the port of Hamburg at the mouth of the Elbe.

The Arbitrator finds nothing in the history of the treaty provisions to place any limitations in this respect upon the literal meaning of Article 339. It appears to have been the underlying purpose of the treaty to provide for the cession of navigation material to the Allied and Associated Powers newly created or receiving enlarged territory as a result of the peace settlement.

While incidents connected with the drafting of Article 339 would not in themselves control the construction of the Article, it may be mentioned that the German Delegation requested the Arbitrator to ascertain the facts relative to the drafting of the provision. The Arbitrator has done so, and finds that originally a separate article was contemplated providing for cessions by Germany to Czecho-Slovakia, but it then seems to have been decided that in the interest of brevity an article expressed in the general terms of Article 339 would cover not only the Elbe, but also the other rivers mentioned in Article 331.

The Arbitrator, therefore, concludes that, in respect of the Elbe, Czecho-Slovakia comes within the scope and purpose of Article 339, and is entitled to cessions thereunder, in accordance with its legitimate needs.

THE TRAFFIC TO BE CONSIDERED IN ESTIMATING THE LEGITIMATE NEEDS OF THE TWO COUNTRIES

Article 339 requires in effect that Germany shall cede to Czecho-Slovakia tugs and vessels, together with their fittings and gear, in good state of repair,

in condition to carry goods on the Elbe, and selected from among those most recently built; and that such cessions shall be determined with due regard to the legitimate needs of the parties concerned, and particularly with reference to the shipping traffic during the five years preceding the war.

The two delegations have agreed to accept the traffic for the year 1913 in lieu of the traffic for the five years preceding the war. The Arbitrator believes that this agreement is a reasonable and convenient method of dealing with the problem, and, therefore, adopts the traffic of the year 1913 as the basis for his consideration of the legitimate needs of the two parties. Annex I hereto attached shows the amount of the 1913 traffic on the Elbe as agreed to by the two parties and as adopted by the Arbitrator.

RECTIFICATIONS OF THE BASIC TRAFFIC

Czecho-Slovakia claims that a very substantial amount ought to be added to the basic traffic of 1913 because of the fact that in the future a large traffic will move by the Elbe to and from Czecho-Slovakia which prior to the war moved via Trieste and Fiume. It is claimed that prior to the war the Austrian Empire embraced Trieste and the principal manufacturing portion of Czecho-Slovakia, and the Hungarian Monarchy embraced Fiume and the remaining portion of Czecho-Slovakia, and as a result that transportation took place between those ports and points in Czecho-Slovakia without crossing frontiers, and that the railroad rates were unusually favorable at that time to such transportation, but that in the future the result will be that several frontiers will have to be crossed if such traffic moves via Trieste and Fiume to or from Czecho-Slovakia, and it will be impossible to secure as favorable railroad rates as were obtainable before the war, and as a result this traffic will move via Hamburg.

The Arbitrator is of the opinion that extreme caution should be used by him in modifying the pre-war figures. It was evidently the purpose of the treaty to make the pre-war figures the principal basis for determining the legitimate needs of the parties. Moreover, the future changes in the traffic are highly speculative as to amount. If the Arbitrator in response to the Czecho-Slovak demand should enter the speculative field and make rectifications in the 1913 traffic beyond those which are indicated in a clear and convincing manner, he would probably find in the same speculative field the necessity for considering various offsetting rectifications in favor of Germany with respect to other forms of traffic which could probably be urged with corresponding plausibility (for example, it is suggested by Germany that the brown coal traffic from Czecho-Slovakia to Germany may diminish in future years).

The Arbitrator, therefore, feels that he should make no rectifications on account of traffic formerly moving via Trieste and Fiume, except where a very high degree of probability is established that such traffic will move via Hamburg in the future, particularly in view of the tendency of the ports of

Trieste and Fiume to hold their traffic on account of their splendid equipment and on account of the skill and knowledge of their commercial firms. Elaborate presentations have been made by both delegations on this question. After careful consideration of all that has been submitted, and bearing in mind the necessity for resolving doubts against modifications of the pre-war figures, the Arbitrator decides that on account of the Fiume and Trieste traffic which is likely to move via Hamburg and the Elbe in the future, there should be a rectification of 300,000 tons, of which 150,000 tons will be treated as imports and added to the Hamburg-Aussig transit traffic shown in Annex I, and 150,000 tons will be treated as exports and added to the Aussig-Hamburg transit traffic shown in Annex I.

AMOUNT OF SHIPPING REQUIRED TO PERFORM CZECHO-SLOVAKIA'S PART OF
THE TRAFFIC THUS ADOPTED

This subject involves the question as to what part of the traffic should move in Czecho-Slovak boats, and as to how many boats would be required to transport that part.

It is clear that as to the traffic beginning and ending in Czecho-Slovakia, *i.e.*, its strictly internal traffic, Czecho-Slovakia should have boats sufficient to carry 100% of that traffic.

As to traffic between Czecho-Slovak ports and German Elbe ports (called Middle Elbe for convenience), above Hamburg, Czecho-Slovakia claims that each country should have 100% of the boats necessary to carry traffic originating in its own territory, while Germany claims that each country should have 50% of the boats necessary to carry the traffic in both directions, upstream and downstream.

Broadly speaking, all transportation between Czecho-Slovak localities and German localities must involve the cooperation of nationals of the two countries. A Czecho-Slovak seller cannot send his commodities to Germany without finding a German buyer. In view of this essentially joint participation of the two countries in all of these transactions, the Arbitrator feels that the reasonable and proper method is to allow each of the two countries 50% of the boats for carrying traffic in which the two countries are jointly interested.

The Arbitrator had to consider a similar question in his determination (made January 8, 1921) in the matter of cessions by Germany to France under Article 357 of the Treaty of Versailles. In that case he reached the same conclusion as is above indicated, *i.e.*, that each country should be regarded as having the legitimate need to control 50% of the boats for the purpose of carrying such joint traffic.

As to traffic between Czecho-Slovakia and Hamburg which has its origin or destination overseas, the Czecho-Slovak Delegation claims 100% of the boats necessary to carry the entire traffic, whereas Germany claims that each nation should have 50% of the necessary boats. Czecho-Slovakia claims

that Germany has no interest in or control over this traffic since it originates or is destined overseas and will have the privilege of using the facilities at Hamburg which will be allowed to Czecho-Slovakia in the free zone provided for in Article 363. Germany claims that this traffic is principally in the hands of German firms, although neither origin nor destination is in Germany. The Arbitrator is of the opinion that it should be regarded as a legitimate need of Czecho-Slovakia to control 100% of the boats necessary to perform this traffic.

As to traffic between Czecho-Slovakia and Hamburg, other than overseas traffic last mentioned, the same principle controls as in the case of traffic between Czecho-Slovakia and the Middle Elbe, and, therefore, it is a legitimate need of each country to have 50% of the boats necessary to carry the traffic.

The next point is to decide upon the necessary factors to be employed in arriving at the amount of tonnage and horse-power requisite to be ceded to Czecho-Slovakia in order that it may carry the traffic allotted to it according to the foregoing facts and principles. These factors are:

- (a) The number of days of service per year for barges and tugs, respectively;
- (b) The number of tons per horse-power which the tugs will pull upstream on the various stretches of the river;
- (c) The average percentage of utilization of the cargo capacity of the barges;
- (d) The times required for tugs to make their round trip voyages on the various stretches of the river, and the times required for the barges to make their round trip voyages, and the time to be allowed for loading and unloading of barges.

The two delegations have applied themselves most diligently to a study of these problems. They have agreed on numerous factors.

They have been unable to agree upon some, and as to them it has been necessary for the Arbitrator and his Executive Assistant to give most careful attention to the arguments of the two delegations.

It is unnecessary to complicate this determination with a discussion of the technical details involved. The Arbitrator has concluded that in principle the amount of tonnage and horse-power which would be required to enable Czecho-Slovakia to transport that part of the traffic which its legitimate needs entitle it to transport would be 261,000 tons of barge capacity and 17,800 horse-power of tug capacity.

THE AMOUNT OF SHIPPING WHICH IN PRACTICE SHOULD BE REGARDED AS THE
LEGITIMATE NEED OF CZECHO-SLOVAKIA IN VIEW OF SURRENDER FOR
RESTITUTION AND REPARATION AND OF OTHER CONDITIONS AFFECTING
THE SHIPPING ON THE ELBE

The legitimate need of Czecho-Slovakia for shipping on the Elbe should be decided in the light of the amount of shipping that will remain on the Elbe after Germany makes under the Treaty of Versailles the necessary cessions for reparation and any necessary restitutions. Indeed, that treaty expressly provides that the amount of tugs and vessels to be ceded by Germany must be specified out of those which remain registered in the German Elbe ports

after the deduction of the tugs and vessels surrendered by way of restitution and reparation.

Units surrendered or to be surrendered for restitution need not be considered, because they are not counted as a part of the German river fleet.

The Reparation Commission has certified to the Arbitrator the size of the entire German river fleet as of November 11, 1918, and has also certified to the Arbitrator the losses incurred by the Allied and Associated Powers for which reparation is to be made by a cession of a part of the German river fleet. Annex III of Part VIII of the Treaty of Versailles provides that the conditions of cession for purposes of reparation shall be settled by the Arbitrator. He has accordingly prescribed such conditions of cession and under these conditions of cession the Arbitrator assumes the function of selecting from the entire river fleet of Germany the boats to be ceded for purposes of reparation. By virtue of the Arbitrator's functions and action in this matter, the Arbitrator knows that not more than 187,000 tons of barges registered in ports of the Elbe and not more than 330 horse-power of tugs registered in ports of the Elbe will have to be ceded by Germany to the Reparation Commission to make good the losses in inland navigation tonnage incurred during the war by the Allied and Associated Powers.

Appendix II hereto attached shows the fleet of tugs and vessels on the Elbe as agreed to by the Czecho-Slovak and German Delegations in the present proceeding.

The Arbitrator, therefore, decides that, after restitution and reparation, all of the tugs and vessels shown in such Appendix will remain registered in the ports of the Elbe, except not exceeding 187,000 tons of barges and 330 horse-power of tugs, which is the maximum of such barges and tugs that will be surrendered by Germany by way of restitution or reparation.

In the light of this decision as to the tugs and vessels remaining registered in the ports of the Elbe after the deduction of the maximum amount which can be surrendered by Germany by way of restitution or reparation, and bearing in mind also the slight rectification which has been made in the basic traffic, the Arbitrator decides that Czecho-Slovakia ought to have, in order fairly to meet its legitimate needs on the Elbe, 223,300 tons of barges and 17,720 horse-power of tugs.

The Arbitrator also decides that Czecho-Slovakia ought to have, in order fairly to meet its legitimate needs on the Elbe, 1890 horse-power of harbor tugs and 1,346 tons of freight boats.

THE AMOUNT OF SHIPPING TO BE PROVIDED FOR CZECHO-SLOVAKIA AFTER DEDUCTION OF SHIPPING ALREADY REGISTERED IN CZECHO-SLOVAK PORTS AND CONTROLLED BY CZECHO-SLOVAK NATIONALS; AND THE PROCEDURE FOR REMOVING COMPLICATIONS AND SELECTING SUCH SHIPPING

It appears that there are 50,200 tons of barges and 2,720 horse-power of tugs already registered in Czecho-Slovak ports on the Elbe and controlled by

Czecho-Slovak nationals and it is clear that to the extent of this amount of shipping the legitimate needs of Czecho-Slovakia are already met.

The question remains as to the manner in which provision shall be made for the remaining 173,100 tons of barges and 15,000 horse-power of tugs which are necessary in order to meet in practice the legitimate needs of Czecho-Slovakia as determined by the Arbitrator.

Czecho-Slovakia urges that in the first instance its legitimate needs should be satisfied: (1) by the transfer to it of all the tugs, vessels and other property of the Austrian Northwest Elbe Shipping Company, which is controlled by German capital, but a large proportion of whose vessels and tugs are registered in Czecho-Slovak ports; and (2) by giving Czecho-Slovakia complete control over all the tugs, vessels and other property of the German-Austrian Steamship Company and the New German-Bohemian Elbe Shipping Company, which are controlled by Czecho-Slovak capital, but whose tugs and vessels are registered in German ports. Germany urges that the tugs and vessels in these two categories can be regarded as already meeting the legitimate needs of Czecho-Slovakia because in one instance Czecho-Slovakia has a measure of control through the fact of registry in Czecho-Slovak ports, although the tugs and vessels are controlled by German capital; and in the other instance Czecho-Slovakia has a measure of control through the fact that the tugs and vessels, though registered in German ports, are controlled by Czecho-Slovak capital.

Thus both delegations appear to look in the first instance to the satisfaction of the legitimate needs of Czecho-Slovakia out of the tugs and vessels falling in these two categories.

The Arbitrator is of opinion that the tugs and vessels coming within these two categories cannot be regarded as fully responsive to the legitimate needs of Czecho-Slovakia unless in the one case (where the registry is already in Czecho-Slovak ports) all German ownership or interest shall be transferred to Czecho-Slovakia, and unless in the other case the registry shall be transferred from German ports to Czecho-Slovak ports, (together with the transfer of any element of ownership or interest which is not already owned by Czecho-Slovak nationals), all such steps to be evidenced by the necessary documents; to the end that in both cases the tugs and vessels, before being counted against the legitimate needs of Czecho-Slovakia, shall be both registered in Czecho-Slovakia and completely owned and controlled by Czecho-Slovakia or its nationals. It is recognized that the total of tugs, harbor tugs and freight boats in these two categories are in excess of the legitimate needs of Czecho-Slovakia for tugs, harbor tugs and freight boats and due adjustment therefor should be made.

The Arbitrator is further of opinion that to the extent that the legitimate needs of Czecho-Slovakia as determined by him shall not be satisfied out of the two categories last mentioned and in the manner indicated by the Arbi-

trator, Germany shall cede to Czecho-Slovakia tugs and vessels from among those registered in German Elbe ports, which shall be selected from among those most recently built, and all tugs and vessels so ceded shall be provided with normal and proper fittings and gear and shall be in a good state of repair and in condition to carry goods.

The tugs and vessels ceded by Germany to Czecho-Slovakia shall be accompanied by documents evidencing the transfer to Czecho-Slovakia of the entire property in such tugs and vessels free from all encumbrances, charges and liens of all kinds.

If the tugs and vessels now registered in Czecho-Slovakia and belonging to the Austrian Northwest Elbe Shipping Company are not, through the processes above pointed out by the Arbitrator, devoted to the satisfaction of the needs of Czecho-Slovakia, but remain in the control of German capital, and instead of, and as the due equivalent for, such tugs and vessels Germany shall cede other tugs and vessels to Czecho-Slovakia, the Arbitrator will entertain an application by Germany that as a condition to the completion of the cessions to be made the registry of such tugs and vessels of said last mentioned company shall be transferred from Czecho-Slovak ports to German ports.

The Arbitrator believes that in the light of the foregoing principles the two delegations will be able to reach an agreement as to the steps which are practicable and reasonable in respect of the Austrian Northwest Elbe Shipping Company's tugs and vessels which are registered in Czecho-Slovak ports and in respect of tugs and vessels of the German-Austrian Steamship Company and the New German-Bohemian Elbe Shipping Company; and, following such agreement, will be able to select, in accordance with the foregoing principles, the other units of tugs and vessels to be ceded by Germany to Czecho-Slovakia.

The Arbitrator, therefore, directs that prior to Wednesday, July 6, 1921, the Czecho-Slovak Delegation and the German Delegation shall endeavor to agree upon the steps to be taken and upon the tugs and vessels to be selected in accordance with the foregoing principles for the satisfaction of the legitimate needs of Czecho-Slovakia. At 10 o'clock on Wednesday morning, July 6, 1921, the Arbitrator will receive the reports of the Czecho-Slovak and German Delegations as to the result of their efforts to agree, will thereupon hear the two delegations as to the points upon which they are unable to agree, and will then specify the steps to be taken as to the tugs and vessels of the Austrian Northwest Elbe Shipping Company which are registered in Czecho-Slovakia, and as to the tugs and vessels of the German-Austrian Steamship Company and of the New German-Bohemian Elbe Shipping Company, and will designate the additional units of tugs and barges to be ceded, and will give the notification contemplated in the first sentence of Article 339 of the Treaty of Versailles.

MATERIAL NECESSARY FOR THE UTILIZATION OF THE RIVER

Czecho-Slovakia has asked for the cession by Germany of various buildings, fixed harbor installations and floating cranes, pontoons and other floating material, on the ground that it is entitled to the same under the provision of Article 339 that Germany shall cede material of all kinds necessary for the utilization of the river system.

Czecho-Slovakia demands various buildings and other property of the Austrian Northwest Elbe Shipping Company located or used in Germany. The Arbitrator, however, decides that Germany cannot be required to cede these buildings and other installations and property to Czecho-Slovakia simply because they are the property of a company which appears to have been largely interested in navigation to and from the ports which are now in Czecho-Slovakia.

Czecho-Slovakia also demands various buildings and other property located or used in Germany and belonging to the German-Austrian Steamship Company and the New German Bohemian Elbe Shipping Company, both of which Companies are controlled by Czecho-Slovak capital. Here likewise the Arbitrator decides that Germany cannot be required to cede such property to Czecho-Slovakia simply because it belongs to companies which are controlled by Czecho-Slovak capital.

Czecho-Slovakia also demands that Germany cede to it certain buildings and other fixed property located in Czecho-Slovakia and belonging to the Austrian Northwest Elbe Shipping Company or the German-Austrian Steamship Company or the New German-Bohemian Elbe Shipping Company. As to all of this property, except the buildings used for offices, the Arbitrator decides that Czecho-Slovakia will be able to see that it is used without discrimination for the benefit of all boats using the river, since the property is within the territorial jurisdiction of Czecho-Slovakia, and hence the Arbitrator decides that there is no necessity for requiring Germany to make any cession in respect of any of this property. A different principle may be applicable as to the buildings which are used for offices, and this branch of the matter will be referred to below.

With reference to the buildings and harbor installations in the port of Hamburg, the following articles of the Treaty of Versailles have an important bearing:

ARTICLE 363

In the ports of Hamburg and Stettin Germany shall lease to the Czecho-Slovak state, for a period of 99 years, areas which shall be placed under the general régime of free zones and shall be used for the direct transit of goods coming from or going to that state.

ARTICLE 364

The delimitation of these areas, and their equipment, their exploitation, and in general all conditions for their utilization, including the amount of the rental, shall be decided by a commission consisting of one delegate of Germany, one delegate of the Czecho-Slovak state and

one delegate of Great Britain. These conditions shall be susceptible of revision every ten years in the same manner.

Germany declares in advance that she will adhere to the decisions so taken.

The Arbitrator is of opinion that with respect to the buildings and harbor installations necessary for the traffic referred to in Article 363, the matter is to be determined in accordance with the provisions of Article 364, which are special in character and which should, therefore, prevail over the general provisions of Article 339. The Arbitrator will discuss below the question whether any of the Hamburg traffic shown in Appendix I is outside the scope of Articles 363 and 364 and if so what, if any, material is needed in respect thereof.

The foregoing principles having been established with reference to material to be ceded for the utilization of the river, it is still necessary to determine the question of fact as to what buildings, harbor installations and other property located or used in Germany should be ceded by Germany to Czecho-Slovakia under Article 339 in order to meet the latter's legitimate needs.

The Arbitrator decides that Czecho-Slovakia has a legitimate need for certain installations at Magdeburg and that this need will be met by the cession to Czecho-Slovakia of the smaller of the two warehouses belonging to the firm of Schulze & Company, with the quay and two electric cranes pertaining thereto. The Arbitrator hereby determines that Germany shall cede to Czecho-Slovakia said warehouse, quay and electric cranes. Prior to Wednesday, July 6, 1921, the Czecho-Slovak Delegation and the German Delegation shall endeavor to agree upon a precise description of such warehouse, quay and electric cranes to be ceded in accordance herewith, and shall report to the Arbitrator at 10 o'clock on Wednesday morning, July 6, 1921, and the Arbitrator, after hearing the parties, will settle the precise description of the property and interests to be ceded and will include the same in the notification contemplated in the first sentence of Article 339. The cession of said property and interests shall be accomplished by the execution of all legal documents and the doing of all acts necessary or proper in order to vest in Czecho-Slovakia the entire ownership of such property and interests free from all encumbrances, charges and liens of all kinds.

The Arbitrator decides that Czecho-Slovakia has a legitimate need for the three floating cranes of the Austrian Northwest Elbe Shipping Company which are used in Czecho-Slovakia, one at Karlin, one at Teschen, and one at Aussig. These floating cranes have no fixed location, and so long as they are controlled by German capital, there is the chance that they may be removed from the territorial jurisdiction of Czecho-Slovakia. The Arbitrator, therefore, decides that Germany shall cede these floating cranes to Czecho-Slovakia, and shall deliver proper documents evidencing the transfer to Czecho-Slovakia of the entire property in such cranes, free from all encumbrances, charges and liens of all kinds. Such cranes will be included in the notification above referred to.

The Arbitrator requests the two delegations to agree, if possible, concerning the matters involved in the following four questions, and to report to him at the meeting on Wednesday, July 6, their agreement, or their respective views to the extent that they cannot agree:

1. Is there any traffic at Hamburg, shown in Appendix I, of interest to Czecho-Slovakia and outside of the scope of Articles 363 and 364; and, if so, has Czecho-Slovakia a legitimate need for any installations at Hamburg in respect of such traffic; and, if so, what installations are needed for that purpose?

2. Has Czecho-Slovakia a need for the quay of about 435 meters in length on the right bank of the Elbe at Magdeburg between the Koenigsbridge and Ankonastrasse, or for any part thereof, or for any equivalent property at Magdeburg?

3. Has Czecho-Slovakia a legitimate need, on the German part of the Elbe, for the two floating cranes and the twenty pontoons, or any part thereof, demanded by it out of the property of the Austrian Northwest Elbe Shipping Company?

4. Has Czecho-Slovakia a legitimate need for the cession to it of the property in the buildings owned by the Austrian Northwest Elbe Shipping Company and used for offices at Karlin, Aussig and Melnik in Czecho-Slovakia?

The Arbitrator, after receiving the report or reports of the two Delegations on Wednesday, July 6, in respect to the matters involved in the four questions last stated, will determine what, if any, material, of the character referred to in said four questions, shall be ceded by Germany to Czecho-Slovakia, and will specify the same, and the manner of effectuating the cession thereof, in the notification to be given at that time.

With the exception of the Schulze warehouse, quay and electric cranes at Magdeburg and the three floating cranes in Czecho-Slovakia, above awarded to Czecho-Slovakia, and with the exception of the property referred to in said four questions, as to which decision is reserved, the Arbitrator decides that no need has been shown for the cession by Germany to Czecho-Slovakia of material for the utilization of the river.

PLACE OF DELIVERY AND PROVISIONS FOR INSPECTION

The place of delivery of tugs and vessels and other movable material and the provisions as to inspection of tugs, vessels and other material and as to inspection of the necessary documents to be delivered therewith will be settled at or before the time of the notification which is to be given after the meeting above fixed for Wednesday, July 6, 1921.

VALUATION

At or after the hearing to be given on Wednesday, July 6, 1921, the Arbitrator will prescribe the procedure to be followed with a view to his settling in a lump sum the value of the cessions under Article 339.

POSSIBLE ADDITIONAL CESSION BY REASON OF DIMINUTION IN CESSION FOR
REPARATION

If it shall be found that the total amount of barges to be ceded by Germany to the Reparation Commission out of the German Elbe fleet shall be substantially less than the 187,000 tons hereinabove mentioned, the Arbitrator will entertain an application by Czecho-Slovakia for the selection by the Arbitrator of additional units of barges within the limit of the 261,000 tons of barges (which the Arbitrator has above indicated represents in principle the total legitimate needs of Czecho-Slovakia) for the purpose of giving Czecho-Slovakia its fair proportion of all barges remaining registered in Elbe ports after the deduction of those surrendered by way of restitution or reparation.

CONCLUSION

In conclusion, the Arbitrator hereby expresses his high appreciation of the extremely helpful cooperation which has been accorded him by the two delegations, and especially for the great assistance they have rendered him through settling by agreement numerous important technical factors with which the Arbitrator had to deal.

Paris, June 14th, 1921.

By the Arbitrator:
(Signed) BRICE CLAGETT,
Executive Assistant.

(Signed) WALKER D. HINES,
Arbitrator.

ANNEX I

Agreed 1913 Elbe Traffic

DISTRICT	TONS OF TRAFFIC
Aussig-Hamburg (transit).....	600,000
" (local).....	200,000
Hamburg-Aussig (transit).....	650,000
" (local).....	50,000
Aussig Middle Elbe.....	1,600,000
Middle Elbe-Aussig.....	50,000
C. S. Local traffic downstream.....	255,000
C. S. Local traffic upstream.....	95,000
TOTAL traffic interesting Czecho-Slovakia.....	3,500,000
Internal German traffic.....	13,900,000
TOTAL Elbe traffic.....	17,400,000

ANNEX II

Agreed Elbe River Fleet

Owner and Registry	Number of Barges	Tonnage of Barges	Number of River Tugs	H. P. of River Tugs	Number of Harbor Tugs	H. P. of Harbor Tugs	Number of Self-Propelled Vessels	Tonnage of Self-Propelled Vessels	Miscellaneous
Registered in C. S. and controlled by C. S. Nationals.....	145	50,200	14	2720					
Registered in C. S. and controlled by German Nationals.....	114	78,900	8 (1)	1200	7	850	7	$\frac{2300}{1800}$ HP	
Registered in Germany and controlled by C. S. Nationals.....	85	62,950	31	20,400	9	1890	5	$\frac{1346}{1150}$ HP	20 storage boats and 24 lighters for sea service and 2 launches
Registered in Germany and controlled by German Nationals.....		1,103,050 (3)	168	51,040	(2)	(2)	180	$\frac{24,154}{19,350}$ HP	(4)
TOTAL.....		1,295,100 (3)	221	75,360			292	$\frac{27,800}{22,300}$ HP	

(1) Includes one paddle wheel tug and 7 chain tugs. The chain for the tugs is controlled by German Nationals also.

(2) Not stated but included in self-propelled vessels.

(3) Excludes 80,000 tons broken up from 1918 to 1920.

(4) Not shown.

BOOK REVIEWS AND NOTES*

International Society: Its Nature and Interests. By Philip Marshall Brown.
New York: The Macmillan Co., 1923. pp. xiv, 173. \$1.50.

The vision of a new world order which came to many as a result of the late war has been followed by much disillusionment. There has been the inevitable search for the causes of failure, much of it directed to discussion of existing and proposed instrumentalities for world organization. By way of contrast, this book is devoted to a study of foundations rather than of superstructure; of the materials of international society, rather than the construction of a system.

At the basis of international society is man himself, viewed however as part of the state. The author analyzes this relationship, the tendency toward nationalism to which it gives rise and its effect upon international stability. National communities, though entities, cannot be regarded the subjects of coercive law, like individuals. The law of nations is therefore not comparable to municipal law, though to the adherents of the Austinian theory he points out that international law is nevertheless true law, having for its sanction the enlightened self-interest of nations. He excludes the laws of war because these are abnormal in character and are supposed to regulate conduct under conditions which are an absolute denial of law (p. 31).

The author emphasizes the incompleteness of international law. There are no means of establishing moral rights as distinguished from vested legal rights, though "the peace of international society demands the highest degree of freedom of international intercourse" (p. 45). From this premise, he ventures into new ground, suggesting a pooling of economic interests in peace times similar to the methods employed by the Allies during the war. His reasoning is forward-looking and upon a high plain; but the difficulties of achievement are not to be underestimated. So far as territorial adjustments are concerned, the author realizes that "to suggest any alterations of the European *status quo* in times of peace is to endanger peace" (p. 41). Yet one would be inclined to the view that if the nations should ever progress to the point of sharing *economic* advantages, territorial adjustments in the interest of stability would also not be unthinkable.

The details of the settlement of the recent war are not discussed owing to the limitations which the author has set. He recognizes many elements fraught with danger and as these have been deliberately tied up with the League through the peace treaties, he believes that "the League has been unfairly handicapped at the start" (p. 129). The method and purposes of the League receive his general support as a European concern but his prefer-

*The JOURNAL assumes no responsibility for the views expressed in signed or unsigned book reviews or notes.

ences seem to be against active participation on the part of the United States (p. 130).

The author has by no means omitted discussion of machinery and institutions in his survey of the bases of international society. Besides the League of Nations, he reviews the several functions of the Court of Arbitration and the Court of Justice in a chapter entitled "International Disputes." The competence assigned to the new court would be narrower than proposed by the solution of the Institute of International Law in 1922 (p. 88). The author also prefers that disputes arising from the interpretation of the recent peace treaties should go to the Hague Court of Arbitration rather than to the new Court of Justice, because he fears that it would deflect it from its true task of "the judicial decision of justiciable disputes on a strictly legal basis" (p. 85).

In the final two chapters, the author reviews the new alignment of international political forces since the war and the "imponderables" of race, religion, inherited prejudices and crowd psychology. Here his ripe experience in diplomacy has given him insight into forces often neglected by those having purely academic viewpoints. Above all he sees that the spread of democracy is by no means an element necessarily making for peace. One is reminded of the wise words of Sancho Panza in a recent romantic play. When suddenly elevated to the governorship of Baratania, false counsellors seek to embroil him in war. When asked whether he does not fear the enemy, he replies: "I fear my people more, though I love them too." Perhaps this is just another way of saying, as the author does, that democracy is "an imponderable factor in the relations of peoples that awakens mingled feelings of hope and apprehension" (p. 160).

The discussions, necessarily contracted, are always fresh and interesting. Professor Brown has an admirable quality of reaching out for the vital issues. The book is enlightening and performs the best service of all, stimulation of activity in the mind of the reader.

ARTHUR K. KUHN.

The World Crisis, 1915. By Winston S. Churchill. New York: Charles Scribners' Sons, 1923, Vol. II., pp. xii, 578, index. \$6.50.

This second volume of W. S. Churchill is even more interesting than his first one that covered the preceding years 1911-1914, on the opening period of the war. It is important and interesting from several different points of view: first, because it gives some hitherto unknown, but extremely valuable details, concerning the history of the World War; secondly, on account of the light it throws on the developments of English party-politics and the inside workings of the British Cabinet system; and thirdly, because it candidly discloses Churchill's own doings. In this latter respect, if we remember the storm that broke loose over his head and the many accusations that were

levelled at him, one must say that this narrative exculpates him entirely. It is written in a simple and perfectly sincere way, without the slightest effort to dodge responsibility or avoid ticklish questions. The only thing that remains against him is his impetuosity, his lack of patience and adventure-some spirit. We admit the dangers that such a nervous state of mind can create during a national war; but on the other hand, the great war probably would not have been won without such risk and enterprise. One matter is clear: Churchill explains to perfect satisfaction that the tragedy of the Dardanelles expedition was not due to his fault; least of all are justified such accusations, as for example those of the official Australian Historian of the World's War.

From the first pages of his book, the author gives us a striking picture of the gropings of the Allies for vulnerable points in the German front. Already very early in the war (in the autumn of 1914) did far-sighted statesmen realize that Germany could not be beaten on the Western front; all the Allies could do there was to hold it, and to avoid a break; at the same time, Churchill, Admiral Fisher and some others felt that the great naval superiority of their country was running somewhat idle or wasted. Thus began the "Search for a Naval offensive" (Ch. II), which soon and naturally turned the attention of these men on Turkey; just there existed a most vulnerable point in Germany's armor, and, at the same time, also just there could be found a chance of helping Russia when she began to give out. The Baltic and North Sea coast seemed a most difficult problem for any attack-scheme, though some statesmen, like Admiral Fisher, were not averse from trying it nevertheless. Gradually, however, it became evident that such plans were quite impracticable and consequently attention was centered on the Dardanelles. Incidentally we have here a wonderfully true appreciation of the personality and work of Lord Kitchener, who was at first very much opposed to any southern expedition and did all he could to thwart Churchill's plans; only later did he become luke-warm to it and finally began to press the matter, when it was too late for immediate success.

We find in this volume too a most interesting history of the "Origin of Tanks and Smoke" (Ch. IV), and some beautifully written accounts of the few naval battles that took place in 1915 (Ch. VI), giving us a vivid picture of the work of the British Navy. Being himself full of energy and initiative, Churchill naturally often comes back to the personal appreciation of men in his surroundings, admirals and statesmen, invariably separating them into two incompatible groups, the energetic and active ones, like Beatty or Wilson, and the passive ones, like Jellicoe or deRobeck, who invariably lost their chance of attack and victory, but did preserve the English fleet.

The exploits of the British submarines in the Sea of Marmora, so little known to the outside world and yet so daring and useful, are told in this book with the usual picturesqueness. But the concluding chapters on the Dardanelles battles make really a "Darkening Scene" (Ch. XX), showing us

clearly the "Ruin of the Balkans" (Ch. XXII). The appreciation of the political and military defeat of the Dardanelles and the placing of responsibilities for this terrible tragedy have indeed to be revised, now that we know so much more of the inside history of that discouraging period of the World War.

S. A. KORFF.

Enemy Property in America. By Arthur Garfield Hays. Albany: Bender & Co., 1923. pp. xii, 396. \$12.50.

This book contains a preface of five pages, sixty-six pages of text, 103 pages of reported and unreported cases under the Trading with the Enemy Act decided prior to February 1, 1923, and seventy-four pages containing our treaty of peace with Germany and our treaty of peace with Austria, and portions of the Versailles treaty relating to enemy property. The appendix contains the Winslow Bill, with a note on that bill and a discussion of the future disposition of the balance of alien property.

The book is a useful compilation to any one concerned with questions relating to enemy property. The text, however, constitutes less of a treatise on the subject than of a brief devoted to the practical end of freeing German property seized by the Alien Property Custodian from any liability for the wrongs committed by the German Government upon American citizens. Even considered as a brief on behalf of German clients, the author's argument is often weakened by the necessities of his case.

The book begins with the following statements: "For perhaps two hundred years, private property on land had been regarded as immune from seizure and confiscation." "The seizure of enemy property during the great war was a new departure."

For neither of these statements does there appear to be any foundation in fact, nor is the brief strengthened by the citation of Chief Justice Marshall, on page 63, as supporting the author's claims. The author quotes an extract from Marshall's opinion in *U. S. v. Percheman*, 7 Peters, 51, 86, and, like some other writers who have used the same quotation, ignores the fact that the confiscation which Marshall condemned was the confiscation of the property of individuals in territory acquired by cession or conquest from another sovereign. Between such confiscation and the confiscation of enemy private property in war, Marshall drew a clear distinction, which the author has either ignored or failed to grasp. With reference to the confiscation of enemy property in war, Marshall says, in *Brown v. U. S.*, 8 Cranch. *110, 122, "that war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded."

The existence of a rule of international law is one thing; the desirability of a change in that rule is another thing, as Chief Justice Marshall pointed out with reference to the slave trade, in *The Antelope*, 10 Wheaton, 66.

One of the commonest failures of writers and teachers of international law is to ignore this distinction, and to assert that any rule which the particular writer or teacher believes to be based on sound policy is a rule of international law. The question of law as to the right to confiscate enemy private property is settled by the American authorities against the contention of the author. The authorities are reviewed in the *Boston University Law Review*, Vol. 3, page 156.

The question of policy as to the confiscation of enemy property, like all other questions of policy, must depend upon the circumstances of the particular case. In an ordinary war, such as the war between the United States and Spain, or the Boer war with England, there are reasons of policy for the exemption of private property from confiscation, as is shown by various treaties providing for such exemption. An obvious distinction, however, exists between an ordinary war, fought to settle a particular dispute, and a war *à l'outrance*, fought for the preservation or destruction of national existence. In a war of the former kind, certain rules of comity may be observed. In a war of the latter kind, the law of self-preservation merges all other so-called rules of war. The denial of this rule by jurists has never sufficed to prevent its application by contending belligerents.

As a matter of law, the recognition of the corporate entity of the state does not release its citizens from the obligations of that state. The state is a corporation of which all its citizens are members, but the liability of the members of the corporation is unlimited. The state may be treated as the primary debtor, but whether the liability of its citizens should be enforced indirectly through taxation by the debtor state, or directly by seizure by the creditor state, is a question of procedure and not of liability. Those who deny the right of confiscation attempt to make the right of private property an absolute and abstract right, whereas such right is relative and conditional. The individual rights of life, liberty and property, have no absolute or abstract existence; they are rights which, from a legal standpoint, exist solely because of their protection by the state, and which are, therefore, subject to the needs of the state without limit.

An attempt was made by the Second Hague Conference to limit the rights of belligerents in numerous ways. The conventions agreed upon were not operative during the World War for the technical reason that the belligerents were not all signers of the conventions. There seems to be no reason to suppose, however, that this technical ground was the sole reason that the conventions did not operate. When one nation begins war by treating one treaty as a scrap of paper, the practical importance of treaties becomes seriously diminished. The object of the Hague Conventions was to render war humane, and to limit the damage done as far as possible. It is probable, however, that there never was a war which inflicted so much suffering on noncombatants, as the World War. Under modern conditions, the military power of a nation is affected, not merely by the condition of its combatant

forces, but by the industry and self-denial of every noncombatant above the age of infancy. In the World War, both sides relied upon pressure upon noncombatants as a measure of military importance. The humane theory of excepting noncombatants from the consequences of warfare is so diametrically opposed to the military importance of weakening the power of those noncombatants to support the forces in the field, that there are bound to be two classes of thought in regard to conventions like those of the Hague. Humanitarians and jurists will seek to relieve the pressure on noncombatants, while soldiers, and sometimes statesmen, will seek to increase it. The former will be successful in time of peace in limiting the horrors of war by agreement. Military men in all countries, however, have always been sceptical as to the power of men of the gown to improve on General Sherman's definition of war,—a scepticism in no way diminished by anything that has happened since 1914. The military point of view is illustrated by the following paragraph from the *Wall Street Journal* of October 16, 1923:

Lieut.-Commander Burney of British navy, M. P. and inventor of anti-mine "paravane," says in *Herald* the next war will be marked by three main factors: Increased war area due to range of flying machines, power of offense outstripping defense, and no such persons as non-combatants. Objectives in fighting will be destruction of cities, railways, power stations, factories, any concentrated structures bearing on life of nation and its fighting power.

The future protection of the property of alien enemies from confiscation, therefore, would seem to be at least as uncertain as the protection of the lives of their noncombatants.

EDWARD A. HARRIMAN.

The Principles of International Law. By T. J. Lawrence. Revised by Percy H. Winfield. Boston, New York and Chicago: D. C. Heath & Co., 1923, pp. 766.

That a work on international law written by a clergyman "Rector of Upton Lovel, Wiltshire," whose chosen amusement was gardening and who held for years a rural parish, should have become almost a classic in the twenty-eight years since it first appeared and should reach its seventh edition, is worthy of note.

However, Dr. Lawrence was more than the "rector of a parish." He was a Whewell University scholar and was senior in two Triposes which never happened to any other man at Cambridge, and deputy professor of international law at that great seat of learning when Sir William Vernon Harcourt held the professorship. Coming to the United States in 1892, he filled the post of professor of international law at the University of Chicago for two years. He held the place of reader in international law at Bristol University and of lecturer on international law at the Royal Naval

War College, and the present is one of no less than seven important works, bearing his name, on the same great branch of law, at least one of which had the unique honor of being carried by every American, British and Japanese warship.

When the author brought out the fourth edition in 1910, it was, as he said "practically a new work retaining the old title and the original divisions of the subject."

That edition contained 745 pages and the number was the same in the fifth and sixth editions. They were in fact not new editions; but substantially mere reprints.

Dr. Lawrence's lamented death having occurred on August 16, 1919 the present editor undertook the necessary revision for the seventh edition made imperative by the international events of the past eight years. He has, by rigorous excisions and condensations and by stating the new matter most concisely, expanded the work by but twenty-one pages, so that it now numbers but 766 pages in all. In the sixth edition of 1915 Dr. Lawrence decided to make a few alterations in the text to secure greater accuracy rather "than to attempt any notice of the great changes and controversies that have been thrust on the attention of civilized mankind in the present World War". He anticipated great modifications of existing problems before the close and said "the only thing absolutely certain is that we shall look out upon a different world. It will be time to describe the new order and criticize the events that led up to it, when it emerges from the horror and destruction of the present conflict".

Dr. Winfield, on undertaking the present edition, felt constrained to extend his revision back to 1910, the date of the fourth edition, for the reasons indicated above, and found his task by no means light. Regarding it as imperative that the book should not "outgrow the span which a student may reasonably expect" he abridged Dr. Lawrence's text where he could and added statements as to new matter in as compact a form as was possible, indicating new matter by square brackets.

The references had practically not been verified since the first edition and this verification, though difficult, he has accomplished. Dr. Pearce Higgins, the eminent Whewell professor of international law at Cambridge, in which he is the successor to the two learned and honored names of Westlake and Oppenheim, read the new matter and made invaluable suggestions as to it so that it has the weight of his approval.

Dr. Lawrence had, as was natural, accented the moral rather than the legalistic side of his vast subject and had always been enthusiastic "in the cause of international peace". Who is not? The difference is not as to results, but as to methods which will give the best assurance of those results desired by all. Both Dr. Lawrence and his editor are warm supporters of the League of Nations, and both are insistent that the United States should join not in the concert of Europe, but in the concert of the world. It is

pointed out that she has already so intervened as to the open door in China, in the Morocco conference of 1906, and at the peace conference at Versailles. "A vast and powerful state cannot live alone, simply because it is not alone", says Dr. Lawrence. The same may be said of an American heiress besieged by European suitors, yet her surrender to their suit has not often been for her good and has often proved her lasting misfortune. We cannot read the future. That is reserved for the wisdom of palmists and fortune-tellers, who wear oriental costumes and accept a small fee. Dr. Lawrence as late as 1910 in his fourth edition, however, discovered "a new spirit abroad", and recorded the great progress of the past few years and was ardently assured that "the two Hague conferences have given an enormous impulse to the forces that make for peace".

"So thought we all of us, so thought we all", but we have been taught by the events that neither he nor we were among the prophets. The remedy so hopefully accepted was what Richard Grant White called "court plaster for a cancer".

Now, like the Irish lawyer whose points were overruled, and who declared "I will now submit your honor", six others "aaqually as conclusive", they demand that we accept kindred scholastic schemes for composing international disputes. We are again assured (as by the quack in the French play), that "*these pills* are good against the earthquake" and we are told to lay aside all other remedies and precautions and to trust to these alone.

Dr. Lawrence has, however, very lucidly and adequately traced the history, development and stated very justly the present state of international law. His book was "written in English, and intended in the main for British and American readers", and he says "that of set purpose he has taken most of the cases" from British and American History. Having taught on both sides of the Atlantic he has noticed "that the influence of old controversies and misunderstandings has not entirely passed away". He seeks to discuss them in a spirit of impartial justice and if he ever favors his own country "the error is that of one who", as he says very pleasantly, "were he not an Englishman, would ask no better fate than to be an American".

He says he was "helped at every turn by the robust and incisive arguments of Mr. R. H. Dana, and the judicial reasoning and encyclopedic knowledge of Mr. W. E. Hall".

Dr. Winfield's additions cover a great number of points which arose in what he constantly cites as "the great war", and from the treaties and covenants consummated at its close, and the vast complications that have ensued and are now threatening the peace of the world. Thus the League of Nations (pp. 77 and 571); mandates (p. 80), jurisdiction over the air (p. 143); Permanent Court of International Justice (p. 576, where it is difficult to separate the author's and editor's text); blockade during the

great war (p. 698); continuous voyage (p. 728); contraband (p. 734); and a thousand other matters as affected by late practice and decisions are discussed. References are made constantly to our principal mine of international precedents, Moore's *Digest* and to the seventeen volumes of this JOURNAL. The convenient practice of referring for public documents to the SUPPLEMENTS to the JOURNAL is also largely followed. The present edition gives us as clear, useful and modern a handbook of the subject as can be hoped for. The style is somewhat ornate and expansive, perhaps from the influence of the pulpit, the platform of the political speaker and the law lecturer. In all these Dr. Lawrence was known for ready flowing interesting and forceful speech. At his death the London *Times* said his style was formed confessedly on long study of Macaulay.

But there is broad knowledge, admirable arrangement, definite information, a just and humane spirit, and the story moves along embellished with many a picturesque fact so that the student reads *con amore* and seldom falls asleep.

CHARLES NOBLE GREGORY.

Public Opinion in War and in Peace. By Abbott Lawrence Lowell, President of Harvard University. Cambridge: Harvard University Press. London: Humphrey Milford, Oxford University Press. 1923. pp. xi, 302. \$2.50.

This book is a new and important study of the nature and limitations of opinion, the processes of its formation and the modes of giving expression to it, especially in developing and directing the policies of government. As President Lowell points out, there is unavoidable repetition in some places of views expressed in his earlier writings, particularly in *Public Opinion and Popular Government*, but the repetition is not extensive and the present work is a fresh and suggestive examination of this important subject.

The study was suggested by the political attitude of thoughtful people which President Lowell observed during a visit to England during the summer of 1920. There seemed to be an atrophy of public opinion. There was criticism, but it was negative rather than constructive, and it was unable to rally any considerable body of thought about a positive program. A natural curiosity was aroused, says the author, to inquire into the reasons for such a condition, and its bearing upon the peculiar, but various, states of mind prevailing in other countries that had taken part in the great struggle. "Public opinion everywhere after the war flowed in unaccustomed channels: and, since light is often shed upon normal conditions by a study of the abnormal, it seemed that something might be learned about the nature of public opinion in ordinary times by observing its operation under the severe strains that accompany and follow a great war."

In the chapters expressing the results of the study thus suggested, the

formation of personal opinion is first considered, with an inquiry into the reasons why rational people reach different opinions with a sense in their minds, not of doubt, but of conviction. Then follows a discussion of the nature and growth of collective opinion, the influence of leaders, the benefits and dangers of the group spirit. While President Lowell gives full recognition to the value of groups, and considers the group spirit not only unavoidable but absolutely essential for all civilization, from the barbarous tribe to highly organized communities, he is not one of those who regard it as almost if not quite wholly beneficial. It involves, along with its benefits, grave dangers. Loyalty to a group of which one is a member may be ennobling, but it may also be narrowing by diminishing a sense of obligation to those outside the group. A man who seeks to promote his own personal advantage is aware that his efforts are selfish, but if he is striving not for himself but for the benefit of a group of which he is a member, his motive appears unselfish, altruistic, philanthropic. It is none the less selfish, however, and the only difference is that the selfishness is that of a group and not that of a single person. With the increase of group action, in politics, in industry and elsewhere, the public has probably less to fear in the immediate future from personal than from coöperative selfishness.

Public opinion may be formed either by the gradual growth of ideas that in the course of time come to control thought and action, or by the consideration of controversial questions that require immediate decision. Opinions arrived at by the first of these processes are often more active and more effective than those reached in direct political controversy, but when the second method is necessary a choice between two alternatives is more likely to produce a genuine public opinion than a choice among a larger number. In electing one or the other of two candidates, or in supporting or opposing a certain policy, public opinion chooses between two alternatives.

In war, especially in such a war as demands the whole energy of all classes of men and women in war work, there is an immediate effect on the attitude of mind of everyone who is brought into connection with it. The motives of ordinary life are superseded. The sacredness of life loses its relative importance, individual liberty is in some degree subordinated to the main purpose of the time, and difference of opinion about the rightfulness or wisdom of the war appears treasonable. No alternative is permitted, intolerance and excess are in such a war a natural result of the absence of a loyal alternative to its prosecution with the utmost vigor.

After the war abnormal conditions continue. In England, for example, there was at the time of the armistice no organized party of opposition. The ordinary machinery for formulating the questions on which opinion is based had disappeared. Autocratic government continued, as it must always do when there is no concrete alternative. In England and elsewhere there have been also other manifestations of abnormal conditions: a tendency to violent methods, a materialistic reaction, a relaxing of motive that

permits moral lassitude. But the change that has taken place was predictable and the disappointing states of mind that have followed the war are the temporary results of a sudden revulsion of feeling and need not be of long duration.

H. W. TEMPLE.

The Partition and Colonization of Africa. By Sir Charles Lucas, K.C.B., K.C.M.G. New York: Oxford University Press, American Branch. 1922. pp. 228. \$4.20.

This volume contains eleven lectures on problems of world politics which the author delivered in 1921 at the Royal Colonial Institute to a study circle of teachers of the London County Council, and which are "designedly somewhat discursive with the intention of suggesting diverse points of view and a variety of subjects for further study on the most dependent of all the continents." Two lectures are devoted to a historical survey of the coasts of Africa from the earliest times to the nineteenth century; one to the slave trade; one to missionaries and explorers of the interior to 1877; two to the main features of the scramble for Africa from 1884 to 1891 and from 1891 to 1914; three to a study of the European intrusions in North Africa, in South Africa and in West and East Africa; one to the African campaigns of the World War; and one on the result of the war on the map and problems of Africa. Although in scope and detail the volume is not as comprehensive as the larger volume of Norman Dwight Harris on *Intervention and Colonization in Africa* which was published in 1914, it sketches the chief colonial movements of European Powers seeking territory and economic concessions in Africa, and is especially valuable for its brevity of treatment and for its breadth of view in discussing the problems of expansion and administration.

Following the lectures are several brief appendices, including a brief note on books. The volume has a good index and a map of Africa for the year 1914.

In explaining the scramble for Africa after the seventies, the author states that the immediate prelude was not only the discoveries which gave something to scramble for, but also the Franco-German War which unified Germany and drove France to seek new territory to recoup her for the loss of Alsace-Lorraine. British intervention in Egypt, together with the resulting resentment of France, was a kind of prelude to the first scramble for Africa.

In 1884, Germany suddenly assumed a conspicuous place in the African sun and, following the French opposition to the Anglo-Portuguese treaty of 1884, promptly played a leading rôle in calling the Berlin Conference to consider the destinies of Africa. In the partition of territory by various treaties and agreements which resulted from the scramble to 1891—a partition which was in no small degree at the expense of Great Britain—Germany perhaps had the greatest voice, aided by France and Portugal. In connec-

tion with this first stage of the scramble the term "spheres of influence", representing a very rudimentary form of protectorate, was used to designate the preparatory stage of intrusion. In the period from 1891 to 1904, characterized by consolidation of claims and definition of boundaries, and by wars in Africa, the different Powers barred one another's progress and especially collided at a point of converging interests in Lake Chad. French bitterness, which culminated at Fashoda in 1898, was terminated by the Anglo-French convention of 1904 which marked French gains in actual territory. The last stage in the scramble was marked by German attempts to intervene in Morocco, resulting in strained relations between Germany and France. Germany, who had promoted the Berlin Conference in 1884 as a sort of counterblast to the still-born Anglo-Portuguese Congo Treaty, also promoted the Algeiras Conference as a retort to the Anglo-French treaty of 1904—but with less success. Although in 1911 Germany and France eventually settled their African differences by three agreements, by which Germany for concessions to France in Morocco received a great slice of the French Congo with three protruding tongues of much political importance, the clash of interests in Africa, and the feeling engendered thereby, were among the determining causes of the war of 1914. In summing up the main features of the partition to 1914, the author states that at the end "Germany held, perhaps, the most strategic position of all the Powers"—in fact, the ground plan for a Central African empire.

In the three lectures on regional conditions and problems, the author justifies European intrusion—especially British intrusion. European intrusion, either by settlement or by exploitation, although justification can only be found in the human instinct, seems inseparable from human progress and constitutes the larger part of modern history. In orientalized North Africa it is justified both historically and geographically, and especially by provocative conditions. The course which it has followed in effete orientalized Africa is illustrated in Egypt (which had arisen from previous alien intrusion) where financial indebtedness led to European financial control. Here the writer thinks that the general amelioration of native conditions after British occupation "might be held to justify European intervention".

In South Africa, European intrusion, which began at the point most remote from Europe and in a sphere of virgin barbarism, is explained first by the early call of the farther East and also by climate, and is justified on the ground that there was room for whites as well as blacks. In justification of British interference with the first white intruders in South Africa, and for taking the government from the Dutch, the author says, "But weak governments have in history been most injurious to the interests of the governed and only so far as the British Government was weak and vacillating in South Africa—vacillating to a pitiable degree—did it fail to justify the supplanting of the very weak regime of the Dutch."

In West Africa, whose exploitation began with the slave trade, resulting

in antagonism of the black man against the white, the scramble of nations after the seventies, establishing limits and substituting some kind of order for chaos or for barbarism, was beneficial except in the Congo state. Here Great Britain several times (as in 1904) made cessions to France as a set-off to some gain elsewhere, and all four of her dependencies are isolated from each other and almost encircled by the French, but she holds the most valuable centers of trade and has been markedly successful in administration.

In East Africa the British possessions, which date from the period of the scramble for Africa and which since the elimination of Germany have a continuity such as the French have on the west side of the continent, really had their origin in British hostility to the slave trade.

In contrasting French and British methods of handling overseas colonies, Sir Charles says the French are more inclined to centralization and uniformity, while the British favor local legislatures and are content with endless diversities. Native races have probably more day to day practical freedom than under any other overlordship. He asserts that the British government has been fortunate in having had to deal almost entirely with distant provinces.

In the World War, the Allies properly refused to consent to the German overtures for a truce in Africa, which would have left to Germany valuable sea bases and powerful wireless stations such as the high power station at Kamina in Togoland which had been opened only three days before the war began. The failure of strenuous German efforts to arouse Africa against the Allies and the active cooperation of the natives in favor of the Allies is fairly conclusive proof that the natives preferred Allied control to German rule. The elimination of Germany from Africa, as well as the total elimination of all Turkish claims and interests, was the natural and logical result. The removal of the Power which very specially precipitated and influenced the scramble in Africa has greatly strengthened the position of other Powers—preëminently France and Great Britain. Great Britain, which before the war encircled no other European dependency of Africa, now (through her mandate for German East Africa) encircles Portuguese East Africa and has a continuity of territory from the Cape to Egypt.

Although the author recognizes advantages in the increased chances of removing causes of friction by an adjustment of boundaries concentrating spheres of different Powers to prevent intrusion of each into others, he emphasizes the necessity of a plurality of nations and of mutual checks (such as result from interlacing spheres) as adequate safeguards against abuse of power made increasingly possible by consolidation. He suggests that the League of Nations, with the accompanying mandate system (based on a larger recognition of the principle of trusteeship) should prove valuable as another strong safeguard against this danger.

Sir Charles thinks that in the solution or non-solution of African problems, the natives will have a constantly growing voice. Although they will no

doubt follow the guidance of the white men whom they know and trust, they feel the racial equalizing tendencies of the recent period of war and will continue to become more cautious and sophisticated by a knowledge of good and evil. In North Africa, where the races have in a sense agreed to live side by side, not fusing and in the main not competing, the problem is far easier. In South Africa, where the number of educated natives is yearly increasing, and where white labor would like to confine native labor to unskilled work, the difficulty of the problem is increasing.

J. M. CALLAHAN.

Un livre noir. Diplomatie d'avant-guerre d'après les documents des archives russes. Novembre 1910-juillet 1914. Préface par René Marchand. Paris: Librairie du Travail. 1922-23. 2 vols. pp. vi, 372, vi, 591. 30 francs.

This book, containing documents of undoubted authenticity, is a publication of archives to provide a particular argument, not necessarily to add to historical knowledge. The title is supposed to be sardonically reminiscent, "amply justified," according to the publisher's notice, "by the character of the contents, in which is revealed that sinister diplomacy which, under cover of a mendacious democracy, in reality decides the fate of enslaved peoples." Certainly, the serious student is sufficiently warned of the editorial bias.

The documents themselves were uncovered in the files by the Soviet authorities. M. Marchand has competently turned the ciphered dispatches into "clear," but it is difficult to convince oneself that it was all worth doing as it stands. In two volumes are nearly one thousand dispatches, arranged in chronological order on every subject that the Russian Embassy in Paris handled in four years, but with a large number of important dispatches lacking. Throughout two volumes, however, all references to the influence of the press or financial interests on diplomacy are printed in full capitals. Perhaps a dozen of the whole number are documents of definitive value. Among these may be mentioned the texts of the Russo-Italian agreement of Racconigi of October 24, 1909 (I, 357), the Franco-Russian naval convention of July 16, 1912 (I, 299), the protocols of the Franco-Russian military conferences of 1911, 1912, and 1913 (II, 419), the conditions of the Russian loan of 1914, the Straits negotiation of 1908-11, and various formal notes or *aides mémoires* on sundry subjects.

On the other hand, the whole content is new, with the exception of the dispatches of 1914 preceding the declaration of war, and these are given in full, very significantly supplementing the Orange Book edition. The discrepancy between the Orange Book and the complete documents, of which much is made, certainly warrants the careful attention of students.

The book begins with three able reports by Nekludov on French policy, There follow chronologically 600 pages of Isvolsky and 275 of Benkendorv.

Sazonov, Kokovtsev and others. Most of all this is the daily telegraph reports of embassy and the private series of letters of the ambassadors to the St. Petersburg ministry or vice versa.

The bias of the translator, "to divulge the absolutely whole truth" to deceived peoples, results in the publication of much that a purely scientific editor would have suppressed as of no value. The advantage of printing whole dossiers is, however, that we have here, perhaps better than elsewhere, an intimate view of day-to-day diplomacy, of a governmental mind in the making.

The value of these volumes will not be eventually found in the editor's capitalized emphases. It will be found in the fact that the dispatches are a storehouse of detail for the historian.

As a matter of personal evaluation, Isvolsky's judgments, suggestions and method do not impress the reader as equal to those of his subordinate, Sevastopoulo, who was *chargé d'affaires* at various times. Of the other Russian statesmen whose documents are included, Benkendorv, the Ambassador at London, and Kokovtsev, one time Finance Minister, exhibit a mental keenness which is refreshing in a great mass of banal diplomatic correspondence.

DENYS P. MYERS.

The Far Eastern Republic of Siberia. By Henry Kittredge Norton. New York: Henry Holt and Co. 1923. pp. 316.

The center of interest in the history of the Far Eastern Republic lies in the question of the relationship between it and the Moscow Soviet. New evidence on this point may be read in incidents that have occurred since the book under review went to press, culminating in the dissolution of the state and the re-inclusion of its territory within the Russian Federation of Soviets. Mr. Norton regards the creation of the buffer state, not as inspired by Moscow, but as authorized by Lenin only after the arguments of Krasnoschekov had convinced him of its practicability. He does not suggest what may have been the working arrangements between the Central Soviet and the Chita administration, though he gives attention to the mutual interests always recognized in their relations with other states. He accepts, apparently, the independence of the Far Eastern Republic, emphasizing the large peasant majority in the Constituent Assembly. His readers are left unprepared, therefore, for the *dénouement* that came so quickly as to antedate the publication of his interesting and valuable book.

Mr. Norton, who has written also over the pseudonym Orrin Keith, is a student of Oriental politics at first hand. He became personally acquainted with men and conditions in Siberia and reveals a thorough grasp of the many movements and tendencies which he presents in easy style and logical arrangement. His sympathies are with the people of Siberia who had, he

believes, already reached a sound basis of order before intervention began and who were forced by the intervention to endure years of privation, bloodshed, ignominy and retardation of economic development. Responsibility for it he places upon the shoulders of the Japanese military group, though he recognizes the interests of the United States and the other Powers concerned in trying to bring Russia back into the war. He arraigns the Japanese Government for occupying northern Manchuria and many points in Siberia with ten times the number of troops agreed upon, and the Japanese forces for wanton cruelty and incitement to disorder. He asserts that only a few days prior to the armistice on the western front the militarists in Japan, resenting opposition to their Siberian tactics, were urgent for a break with the United States but were restrained by the business group. The Cossack ataman, Semenov, whom the Japanese consistently supported, the author places outside the pale of human society.

Several chapters deal with the political, economic and social arrangements of the Republic, and a concluding one suggests its principal interests in foreign relations. These chapters are somewhat unsatisfactory, providing little information as to the actual operation of the government and very scanty statistical data as to the resources of the region. A valuable chapter discusses intimately the leaders of the new state. Among them Alexander Michaelovitch Krasnoschekov, Jew, communist, refugee in America where he graduated from house-painting to law, president of the Far Eastern Republic, recently reported to have committed suicide in a Vladivostok jail, stands out as Lenin's under-study on a smaller stage. The book is entirely lacking in references to sources, and though its general tone is not unconvincing, it reproduces with too little criticism the pamphlet publications of the short-lived state. It is supplied with a map and a number of appendices, among them the constitution. This is a book for the general reader, its interest enlivened by the high romance of its subject. Too close to the events it narrates for true historical perspective and accuracy it will, nevertheless, also have its value for the future investigator as the record, very largely, of the writer's personal observations.

HAROLD SCOTT QUIGLEY.

Histoire des Grands Principes du Droit des Gens, depuis l'Antiquité jusqu'à la Veille de la Grande Guerre. By Robert Redslob. Paris: Rousseau & Co., 1923. pp. 600. 30 francs.

Professor Redslob has attempted the difficult task of giving us what proves to be at once a history of international law in the past and a textbook of international law in the present. The combination is effected by selecting four leading principles of international law and tracing their development through successive periods of history. As the modern periods are approached, the four principles embrace an ever-widening circle of

subordinate principles and derived rules, until by the time the last period is reached most of the more important topics of international law have received treatment.

The four leading principles selected are (1) the binding force of treaties; (2) the freedom or independence of the state; (3) the equality of states; and (4) the solidarity or interdependence of states. These principles are analyzed in an introductory chapter. The first is shown to be a necessity of social life; the second a primary condition of the development of the state; the third a logical inference from the second, and the fourth the natural law of humanity, the energizing element of international law.

The survey of the recognition by nations of these principles begins with the Ancient World and continues through the Middle Ages, the period of dynastic wars (1648-1789), the French Revolution and the Napoleonic era, the treaties of 1814 and 1815, the Restoration, the Crimean War to the Congress of Berlin, and thence down to the eve of the World War, with some closing remarks upon the catastrophe of the war and the renaissance of international justice.

The historical features of the work are valuable, although they fall far short of supplying an adequate history of international law. The citations of contemporary writers will prove useful to the student, and will enable him to compare and contrast the views of the publicists of one period with those of another. In fact the volume gives a more satisfactory survey of the leading principles than more exhaustive studies could succeed in doing.

Less satisfactory, however, is the treatment of the subordinate principles and rules derived from the four leading principles. The attempt to group the wide range of modern international law under the headings selected results in illogical classifications which not only confuse the science of international law as a whole but obscure the particular topic treated. It is entirely misleading to discuss arbitration, war, and neutrality under the title of "Sovereignty", or to discuss interoceanic canals and rivers under the title of "Equality". Useful as the volume should prove in all but its closing chapter, it emphasizes the need for further efforts to develop a more analytical science of international law.

C. G. FENWICK.

Hispanic-American Relations with the United States. By William Spence Robertson. Carnegie Endowment for International Peace. New York and London: Oxford University Press, 1923. pp. xii, 470. \$4.00.

The editor's preface to this very acceptable volume contains the following pertinent comment: "It is astonishing how few of our people are aware that in the countries to the south of us are great literatures, long established civilizations, and cultures of great peoples, which in some respects may

fairly be said to be superior to our own". This is but one of several books which Dr. Robertson has created to supply this deficiency in our education.

This book is the result of ripe historical scholarship, of a lifelong interest in and familiarity with the field of Latin American history, and of extended travel in the countries to which it relates. A careful reading with attention to the footnote citations reveals the author's wide acquaintance with the literature of his subject, including collections of pertinent manuscripts, though a few books, for example, Lockey's *Pan-Americanism*, Latane's *United States and Latin America*, Stuart's *Latin America and the United States*, Akers' *South America*, Dawson's *South American Republics*, Shepherd's *Latin America*, Fortier and Fickelin's *Mexico and Central America*, and others are conspicuous because of their absence from his extensive bibliography. The absence of the first three might be excused because of their newness, but not of the others.

Although not published until 1923, his book was practically completed in 1919, the author explains, and none of the events considered are carried beyond the conclusion of the World War. This is especially noticeable and especially regrettable in the statistics given in the very useful chapter on commercial intercourse and in the tables of the appendix, in which few facts subsequent to 1917 are included. The two maps occupying pages 194 and 195, which show the diplomatic and consular posts of the United States, are of the year 1914. These could very easily have been brought down to date. The graphic presentation on page 228 of the history of trade from 1821 to 1917 is worthy of special mention. This chapter and the following on industrial enterprises of United States citizens in the southern countries will be especially welcomed by students and teachers of foreign trade.

The author says his book "may be designated as a series of studies about relations between the United States and the Hispanic-American nations." It is in no sense a complete history of the relations between the United States and the other American republics; but it does study in great detail some of the important phases of and episodes in the diplomatic relations of the American nations. However, equally important episodes and phases have been overlooked, or intentionally omitted, or possibly crowded out. The war between the United States and Mexico is dismissed with half of a sentence, concluding with the comment "an event the consideration of which is excluded from the scope of this volume", which provokes the inquiry: Why? His study of the interpretations and applications of the Monroe Doctrine starts with the French intervention in Mexico.

In the first chapter, on the "Age of Transition," the author reviews very briefly the colonial and revolutionary periods. The second entitled the "Foundation of International Intercourse" studies the sending, first of quasi-diplomatic agents, and the later establishment of regular diplomatic

missions. The subject matter of the third chapter, the political influence of the United States, would have been more evident if he had called it the influence of United States political thought on the governmental institutions of the other American nations. Under the title, "Mediation, Arbitration and Diplomatic Adjustments," are studied a few of the well meant, but unfortunately not always well executed or well received, efforts of the United States to promote the peaceful settlement of international controversies. The last three chapters study, respectively, educational contact, geographic explorations, and Pan-Americanism.

In commenting upon his use of certain terms he says: "As the residents of Hispanic America have as much right to consider themselves Americans as have citizens of the United States, I have aimed to refrain from using the term Americans exclusively for my own countrymen." The success with which he has lived up to his aim shows that the people of this country could; and the reviewer believes they should, dispense entirely with this bit of domineering egotism, which is sometimes conscious and sometimes unconscious on our part but always offensive to, though usually overlooked by, our sensitive but polite neighbors. Another term on his use of which he comments is the adjective Hispanic. In justification of his adoption of it he says there has recently been shown a tendency to substitute it for the formerly generally used adjective Latin to denote the nations of America which owe their origin to the Latin countries of Europe. The reviewer disapproves the author's choice in this regard quite as heartily as he approves the author's use of the adjective American. To a Brazilian the term Hispanic America excludes his own country and means the same as Spanish America, the two English adjectives being translated into the same Portuguese adjective, which resembles *Hispanic* much more closely than it does *Spanish*. The reviewer admits with regret that, as the author says, there has recently been shown by some students of history in the United States a growing tendency to adopt the less used, less desirable term, but that this tendency is marked he does not concede. He hopes and believes it will prove to have been a shortlived fad. The term Latin America is capable of misinterpretation with reference to its inclusion or exclusion; but it is less erroneous than Hispanic America, and carries with it no offense or national slight or implication, in the absence of evidence to the contrary, that the user is ignorant of the fact that Brazil is not a Spanish country. The fact emphasized by advocates of the use of the term Hispanic that it is derived from the Latin name Hispania, which was applied to the region now occupied by both Spain and Portugal, explains but does not justify their choice. The value of Dr. Robertson's book is of course not seriously impaired by his adoption of this adjective; but his use of the term unfortunately lends to it prestige that it does not deserve.

WILLIAM R. MANNING.

Economic Imperialism and International Relations During the Last Fifty Years. With bibliography and index. By Achille Viallate. The Institute of Politics Publications. New York: The Macmillan Company, 1923. pp. xv, 180. \$2.00.

The chief merit of this little volume lies in the conciseness with which it reviews the more important events of world politico-economics as they have affected international relations during the last half century. Professor Viallate is a member of the faculty of the *École Libre des Sciences Politiques* (Paris). The tone and content of the present work show him to be an exponent of liberal world politics. To studies necessary for the preparation of previous books, several of which deal with American problems, may doubtless be accredited the comprehensiveness of the lectures which he delivered during the first session of the Institute of Politics (Williamstown, 1921), which lectures are now published under the title given above.

In introducing his subject Professor Viallate presents an outline in high relief of the discoveries, inventions and new business methods born of the latter eighteenth and the nineteenth centuries, one result of which has been the development of interdependence among the nations. The growth of economic unity was obstructed by national self-consciousness and consequent rivalries, but the process continued until the outbreak of the World War.

The most important political result of this economic transformation, we are told in the course of brief concluding remarks, is the present impossibility of an economically independent life for civilized nations. At the close of the eighteenth century the nations were able to live by themselves. Today an important curtailment of exchanges between countries seriously interferes with the well-being of their peoples, unbalances their economic systems and endangers their political stability. The world's war experience was rich in evidence of the essential solidarity that binds the nations together.

The book is divided into two parts, entitled respectively "Growth of Industrialism. Expansion. Ententes and Alliances" (Chapters I-V) and "The War and its Consequences" (Chapters VI-VII). It presents a wealth of facts, widespread public understanding of which would doubtless take the world far along the way toward that replacement of political sentimentalities by economic realities—in behalf of which a very convincing argument is set forth.

Criticism may be made of isolated passages in respect to both emphasis and content, but as a whole the book evokes appreciative commendation.

WALLACE MCCLURE.

The Cambridge History of British Foreign Policy, 1783-1919. Edited by Sir A. W. Ward and G. P. Gooch. New York: The Macmillan Company, 1923. pp. 688.

Volume II of the *Cambridge History of British Foreign Policy* (which work is to be complete in three volumes), deals with the period between 1815 and 1866. It is edited by Sir A. W. Ward and G. P. Gooch, and is divided into fifteen sections contributed by thirteen historians, all of whom, as was explained in the announcement when the first volume was published, are "British subjects by birth," the "aim being to produce a connected narrative which, though adhering strictly to historical truth, shall be written from a national point of view."

It is stated that the "avowed policy" of England since William III has been "to hold in her hands the balance of power" and "to keep it in equilibrium"; and that "the insular position of England, unassailable herself and aiming at no conquest on the Continent has enabled her to play with success the part of *Puissance Mediatrix* of Europe."

The application of this policy of mediation to the immediate Napoleonic post-war problems is particularly interesting in view of the similarity of the problems resulting from the World War of 1914-1918. The problems of a century ago included: relief of the finances of Europe, reduction of armament, withdrawal of troops of occupation from France, the indemnity to be paid by France, the Turkish question, prevention of the extension of the written constitutional form of government to Europe, uprisings in Naples (Italy) and Spain to found governments based on written constitutions, recognition of the newly created republican governments in the former Spanish colonies on the American Continents, etc., and also the attempt of the Czar of Russia to establish and maintain a league of the Christian Powers, to be known as the Holy Alliance, "having for its aim the guarantee of all recognized rights."

The first two chapters, namely "Great Britain and the Continental Alliances of 1816-1822" contributed by Professor W. Alison Phillips, and "The Foreign Policy of Canning 1820-1827" by H. W. V. Temperly, contain an account of the efforts of the British Government "to reëstablish a 'just equilibrium' in Europe after the downfall of Napoleon"; "to bring back the world to peaceful habits;" and to avoid "Continental entanglements".

The insistence of the Czar of Russia upon the establishment and maintenance of the Holy Alliance complicated the situation for the British Cabinet in dealing with the post-war problems, because the opposition of the people and parliament to "Continental entanglements" prevented Great Britain from joining the Holy Alliance. To some of the conferences of the Holy Alliance, however, the British Government sent a representative, who was "merely instructed to watch the proceedings on behalf of his Government," (p. 37), but all the important questions were referred for settlement to the "Council of Ambassadors", under the Treaty of Vienna, on which Great Britain was officially represented. Finally, after more than seven years of

such diplomatic maneuvering, the British Secretary of Foreign Affairs, Canning, having failed to make an alliance with the United States, welcomed the pronouncement by the United States of the Monroe Doctrine as a curb on the aims of the Holy Alliance, and took credit to himself for having "called the New World into existence to redress the balance of the Old."

The British attitude toward the Monroe Doctrine is very illuminatingly described, presumably from the British "national point of view"; and it is stated that "one of Canning's bugbears was the formation of a General Transatlantic League of Republics against a European League of Monarchies" (p. 65); and that his "great fear was that the United States would head a 'General Transatlantic League' to prevent Europe from coöperating with America, or America from coöperating with Europe;" (p. 73) and that Canning's policy nullified the effect of the Monroe Doctrine on the American Continent, and at his death the Latin American Republics looked "towards Great Britain and not to the United States" as "a mighty, a distant, a disinterested, and a powerful Protector" (p. 77).

Equally interesting and instructive is the application of the British foreign policy to complicated international situations arising in subsequent years, as described in this volume, which contains the following sections: "Belgium, 1830-1839" contributed by G. W. T. Omond; "The Near East and France 1829-1847" by G. B. Mowat; "India and the Far East, 1833-1849" by G. P. Moriarty; "United States and Colonial Developments, 1815-1846", and "Anglo-American Relations During the Civil War, 1860-1865" by A. P. Newton; "The European Revolution and After, 1848-1854" by F. J. C. Hearnshaw; "The Crimean War and the French Alliance, 1853-1858" by W. F. Reddaway; "India and the Far East, 1848-1858" by F. W. Buckler; "The Franco-Italian War, Syria and Poland, 1859-1863" by Rachael R. Reid; "Commercial Relations, 1828-1865" by J. H. Clapham; "The French Commercial Treaty of 1860" by E. A. Benians; "The Schleswig-Holstein Question, 1852-1866", and "Greece and the Ionian Islands, 1832-1864" by Sir A. W. Ward.

The effect of the application of the British policy of mediation, as demonstrated in this volume, seems to be to play State X against State Y, so that each will seek the friendship of Great Britain, and will countenance British commercial expansion, and Empire building policies in territories outside of Europe.

The contributors to this volume have had access to the archives of the British Foreign Office, and the majority have used source material. There is appended to this volume, as Appendix A, the text of "Lord Castlereagh's Confidential State Paper of May 5th, 1820"; as Appendix B, "The Suppressed Parts of the Polignac Memorandum, October 9th, 1823"; as Appendix C, communications relating to the Turkish question, Tahiti, and the Spanish marriages; and as Appendix D "Lord Cowley's Memorandum Relative to the Present and Future State of Turkey, March 1856."

It is to be regretted that all the documents referred to in the footnotes from which statements are quoted and which are only available in the archives of the Foreign Office, have not been printed in full as an appendix to this volume.

HOPE K. THOMPSON.

PERIODICAL LITERATURE ON INTERNATIONAL LAW SUBJECTS¹

Abbreviations: American Bar Association Journal (*Amer. Bar Ass. J.*); American Law Review (*Amer. L. R.*); American Political Science Review (*Amer. Pol. Sc. R.*); Archiv des öffentlichen Rechts (*Arch. d. öffentl. Rechts*); British Year Book (*Br. Y. Book*); Bulletin de l'Institut Belge de Droit Comparé (*B. Inst. Belge Dr. Comp.*); Bulletin Mensuel de la Société de Législation Comparée (*B. M. Légis. Comp.*); Canadian Bar Review (*Can. Bar R.*); Die Friedens-Warte (*Fried. Warte*); Foreign Affairs (*For. Aff.*); Harvard Law Review (*Harvard L. R.*); Hispanic American Historical Review (*Hispanic Amer. Hist. R.*); Journal of American Institute of Criminal Law and Criminology (*J. Crim. L.*); Journal of Comparative Legislation and International Law (*J. Comp. Legis. Inter. L.*); Juridical Review (*Jur. R.*); Law Quarterly Review (*Law Quar. R.*); League of Nations Monthly Summary (*L. N. M. S.*); North American Review (*N. Amer. R.*); Revista de Ciencias Económicas (*R. Ciencias Econ.*); Revista de la Facultad de Derecho y Ciencias sociales (*R. Fac. Der.*); Revista de Direito Publico e de Administração Federal, Estadual e Municipal (Brazil) (*Rev. de Dir. Pub.*); Revista Mexicana de Derecho Internacional (*Rev. Mex. Der. Int.*); Revue de Droit International et de Législation Comparée (*R. Dr. Int. et Lég. Comp.*); Revue de Droit International Privé et de Droit Pénal International (*R. Dr. Int. Privé et Dr. Pénal Int.*); Revue Générale de Droit International Public (*R. Gén. Dr. Int. Public*); Revue International du Droit Maritime (*R. Int. Dr. Maritime*); Revista di Diritto Internazionale (*R. Diritto Inter.*); University of Pennsylvania Law Review (*Pa. U. L. R.*); Yale Law Journal (*Yale L. J.*); Zeitschrift für Internationales Recht (*Zeits. Int. Rech.*); Zeitschrift für Völkerrecht (*Zeits. für Völkerrecht*).

Alsace-Lorraine. Les projets de lois d'introduction en Alsace et en Lorraine des lois civiles, commerciales et de procédure et le droit international privé. J. P. Niboyet. *Dr. Int. Privé.* 1922-23. 18:288, 393.

American-Japanese Relations. Again the Yellow Peril. Raymond Leslie Buell. *For. Aff.* Dec. 15, 1923. II:295.

———. Some Statistics on the Japanese in Hawaii. Romanzo Adams. *For. Aff.* Dec. 15, 1923. II:310.

American Relations. La Próxima conferencia Panamericana. Carlos C. Malagarriga. *R. Ciencias Econ.* Jan.-Feb. 1923. Series II. Nos. 18-19, p. 10.

Argentine. Los Nombramientos en la diplomacia. Pablo Santos Muñoz. *R. Fac. Der.* July-Sept. 1923. 2:709.

Armament and Disarmament. Die Garantie- und Abrüstungsvorschläge Lord Robert Cecil. Dr. Hans Simons. *Fried. Warte.* July-Aug. 1923. 23:236.

¹ Limited to articles published in periodicals exchanged with the AMERICAN JOURNAL OF INTERNATIONAL LAW.

Armament and Disarmament. La question de la réduction des armements terrestres à la troisième Assemblée de la Société des Nations. Marcel Sibert. *R. Gén. Dr. Int. Public.* May-Aug. 1923. 2nd series. V:281.

———. Policies and the New Armament Competition. J. M. Scammell. *N. Amer. R.* Oct. 1923. 218:448.

Aviation. The Law of. Edmund F. Trabue. *Amer. Bar Ass. J.* Déc. 1923. 9:777.

Bolshevik Diplomacy, Characteristics of. Alfred L. P. Dennis. *N. Amer. R.* Nov. 1923. 218:599.

Bolshevik propaganda. Germany and the Third Internationale. Alfred L. P. Dennis. *N. Amer. R.* Oct. 1923. 218:455.

British Empire. Constitutional Development in the English-speaking world. Sir James Aikins. *Can. Bar R.* Sept. 1923. 1:584.

———. Development of the British Constitution in the last fifty years. Earl of Birkenhead. *Amer. Bar Ass. J.* Sept. 1923. IX:578.

———. International Status of the British Dominions. C. D. Allin. *Amer. Pol. Sc. R.* Nov. 1923. 17:612.

———. Notes on Imperial Constitutional Law. Berriedale Keith. *J. Comp. Legis. Inter. L.* Nov. 1923. V:274.

———. The Indian Question in Kenya. Stanley Rice. *For. Aff.* Dec. 15, 1923. II:258.

———. The International Status of the Dominions. Berriedale Keith. *J. Comp. Legis. Inter. L.* Nov. 1923. V:161.

British Sea Power. Major-General Sir George Aston. *N. Amer. R.* Nov. 1923. 218:589.

Constitutional Government. Administration of Justice in the United States. John Lord O'Brian. *Can. Bar R.* Nov. 1923. 1:737.

———. Communication de M. E. Chavegrin sur le président de l'Empire Allemand d'après la Constitution du 11 août 1919. *B. M. Légis. Comp.* Jan.-Mar. 1923, p. 67.

———. The Limitations of Law. Calvin Coolidge. *Amer. Law R.* Sept.-Oct. 1923. 57:682.

Dantzig. La Situation juridique du territoire de la ville libre de. Julien Makowski. *R. Gén. Dr. Int. Public.* May-Aug. 1923. 2nd series. V:169.

Divorce. Portée et limite du principe consacrant l'application par les tribunaux français aux étrangers de leurs lois nationales régissant leur statut personnel, spécialement en matière de mariage, de divorce et de séparation de corps. Camille Jordan. *Dr. Int. Privé.* 1922-23. 18:373.

Foreign Trade. The World's Crisis in Cotton. John A. Todd. *For. Aff.* Dec. 15, 1923. II:232.

France. Greater. Henri Hauser. *For. Aff.* Dec. 15, 1923. II:211.

Franco-German Relations. "When Germany occupied France": A reply. Hans Delbruck. *N. Amer. R.* Dec. 1923. 218:759.

Franco-Swiss Relations. Su la mancata ratifica della Svizzera alla Convenzione con la Francia relativa alle zone franche dell'Alta Savoia. T. P. R. *Diritto Inter.* 1923. Series III. II:128.

Government. Growth of Presidential Government in Europe. Charles E. Martin. *Amer. Pol. Sc. R.* Nov. 1923. 17:567.

———. La Burocracia. Clodomiro Zavalia. *R. Fac. de Der.* Jan.-Mar. 1923. Vol. II, No. 2, p. 179.

———. The Political System of Imperial China. Harold Scott Quigley. *Amer. Pol. Sc. R.* Nov. 1923. 17:551.

Hungary. Dismembered, and Peace in Central Europe. Oscar Jászi. *For. Aff.* Dec. 15, 1923. II:270.

International Chamber of Commerce. La Chambre de commerce internationale et l'arbitrage. M. A. de Lavergne. *B. M. Légis. Comp.* Apr.-June 1923, p. 195.

International Law. The Hague Academy. Die Haager Völkerrechtsakademie. Hans Wehberg. *Fried. Warte.* July-Aug. 1923. 23:240.

———. As the Great War has left it. Earl of Birkenhead. *Can. Bar R.* Nov. 1923. 1:763.

———. Does the Eighteenth Amendment violate? *Yale L. J.* Nov. 1923. 33:72.

International Law Association. La 31ª Conferencia. Leopoldo Melo. C. Gonzalez Gowland, Carlos M. Vico. *R. Fac. de Der.* Jan.-Mar. 1923. Vol. II, No. 2, p. 225.

———. Report of the 31st Conference of the. F. N. Keen. *J. Comp. Legis. Inter. L.* Nov. 1923. V:285.

International Law Institute. L'Institut de Droit International session de Grenoble (Août-Septembre 1922). Francis Rey. *R. Gén. Dr. Int. Public.* May-Aug. 1923. 2nd series. V:251.

International Penal Law. Le système de la répression universelle. Ses origines historiques. Ses formes contemporaines. Donnedieu de Vabres. *Dr. Int. Privé.* 1922-23. 18:533.

Interoceanic canals. Another Isthmian Canal? Captain A. W. Hinds. *N. Amer. R.* Oct. 1923. 218:471.

Latin-America. The Evolution of Law in Latin America. E. S. Zeballos. *Amer. Bar Ass. J.* Oct. 1923. 9:633.

Laws of war. Commission de juristes chargée d'étudier et de faire rapport sur la revision des lois de la guerre. *R. Diritto Inter.* 1923. Series III. II:40.

———. I lavori della commissione di giuristi incaricata di studiare e referire sulla revisions delle leggi della guerra. A. C. *R. Diritto Inter.* 1923. Series III. II:115.

League of Nations. Die Völkerbundarmee. General Sarrail. *Fried. Warte.* July-Aug. 1923. 23:224.

———. Zur Organisation der Völkerbundarmee. D. Franz Carl Endres. *Fried. Warte.* July-Aug. 1923. 23:229.

———. Eine Völkerbundarmee? Frhr. von Schoenaich, D. Reinfeld. *Fried. Warte.* July-Aug. 1923. 23:231.

———. Die mögliche und wünschenswerte Entwicklung des Völkerbundes. Georges Scelle. *Fried. Warte.* July-Aug. 1923. 23:233.

———. Il Rapporto d'impiego nella società delle nazioni. Umberto Borsi. *R. Diritto Inter.* 1923. Series III. II:261.

———. La sanction militaire des décisions de la société des nations. C. Piccioni. *R. Gén. Dr. Int. Public.* May-Aug. 1923. 2nd series. V:242.

———. Mussolini and the League. Stephane Lauzanne. *N. Amer. R.* Dec. 1923. 218:751.

———. The Fourth Assembly. *L. N. M. S.* Oct. 15, 1923.

———. The law of reprisals as affected by the League treaty. Thos. H. Black. *Can. Bar R.* Nov. 1923. 1:729.

Maritime Law. A new code for the carriage of goods by sea. Wharton Poor. *Yale L. J.* Dec. 1923. 33:133.

———. Comité Maritime International, Conférence de Londres (9-11 Octobre 1922). W. R. Bisschop. *R. Int. Dr. Maritime.* Apr.-June 1923. 2:25.

———. La Conférence diplomatique de Bruxelles (17-26 octobre 1922). Georges Ripert. *R. Int. Dr. Maritime.* Apr.-June 1923. 2:49.

———. The Hague Rules, 1921. C. R. Dunlop. *J. Comp. Legis. Inter. L.* Nov. 1923. V:258.

Mexican Business Corporations. Louis Rojas de la Torre. *Pa. U. L. R. Suppl.* Nov. 1923.

Monroe Doctrine, The. Edward S. Corwin. *N. Amer. R.* Dec. 1923. 218:721.

Monroe Doctrine. Observations on the. Charles E. Hughes. *Amer. Bar Ass. J.* Sept. 1923. IX:559.

Nationality of Married Women. G. G. Phillimore. *J. Comp. Legis. Inter. L.* Nov. 1923. V:299.

———. *The New Married Women's Citizenship Law.* Richard W. Flournoy, Jr. *Yale L. J.* Dec. 1923. 33:159.

Peace Agencies and Politics. Walker D. Hines. *For. Aff.* Dec. 15, 1923. II:244.

Peace. The Pathway of. Charles E. Hughes. *Can. Bar R.* Sept. 1923. 1:594.

———. *Zur "Verjüngung" des Pazifismus.* John Mez. *Fried. Warte.* July-Aug. 1923. 23:242.

———. *Sekte oder politischer Faktor?* Hellmut v. Gerlach. *Fried. Warte.* July-Aug. 1923. 23:244.

———. *Ideologie und Wirklichkeit.* Von Hans Schwann. *Fried. Warte.* July-Aug. 1923. 23:246.

———. *Hochschule und Pazifismus.* Von Walter Fabian. *Fried. Warte.* July-Aug. 1923. 23:257.

Permanent Court of International Justice. James W. Garner. *J. Comp. Legis. Inter. L.* Nov. 1923. V:282.

———. *Gli Stati Uniti e la nuova Corte internazionale.* Manley O. Hudson. *R. Diritto Inter.* 1923. Series III. II:296.

———. *La Corte permanente di giustizia internazionale.* G. Salvio. *R. Diritto Inter.* 1923. Series III. II:11.

———. *Les décrets du 8 novembre 1921 sur la nationalité d'origine en Tunisie et au Maroc (Zone Française) devant la cour permanente de justice internationale.* *Dr. Int. Privé.* 1922-23. 18:1.

———. *Present Day Problems.* John W. Davis. *Amer. Bar Ass. J.* Sept. 1923. IX:553.

Plebiscite. Le territoire national et la méthode plébiscitaire. M. W. M. Kozlowski. *B. M. Legis. Comp.* Apr.-June 1923, p. 206.

Population. Increase of Contemporary Peoples. W. Russell Tylor. *N. Amer. R.* Nov. 1923. 218:607.

Post-war international relations. The Silent Point of View. C. Reinold Noyes. *N. Amer. R.* Oct. 1923. 218:433.

Private International Law Conflicts. Le Renvoi. P. Arminjon. *Dr. Int. Privé.* 1922-23. 18:565.

Russia. La Fédération Soviétique. Al. Pilenco. *R. Gén. Dr. Int. Public.* May-Aug. 1923. 2nd series. V:223.

Siam. Note sur l'administration de la justice au Siam. Chune Charuvastra. *B. M. Legis. Comp.* Jan.-Mar. 1923, p. 110.

Turkey. The Abrogation of the Turkish Capitulations. Norman Bentwich. *J. Comp. Legis. Inter. L.* Nov. 1923. V:182.

United States. The Senate and our Foreign Relations. George W. Wickersham. *For. Aff.* Dec. 1923. II:177.

Versailles. Before and After. Kepi. *For. Aff.* Dec. 15, 1923. II:193.

World War. Neues sur Schuldfrage. Von Dr. Heinrich Kanner. *Fried. Warte.* July-Aug. 1923. 23:249.

———. The British Flag on the Caspian: A Side-Show of the Great War. Brig. Gen. Sir Percy Sykes. *For. Aff.* Dec. 15, 1923. II:282.

———. The Defence of the Realm losses commission and the War Compensation Court. D. du B. Davidson. *J. Comp. Legis. Inter. L.* Nov. 1923. V:234.

———. Title to German ships seized by the United States during the. Joseph Whitla Stinson. *Pa. U. L. R.* Nov. 1923. 72:23.

HOPE K. THOMPSON.

RECENT QUESTIONS AND NEGOTIATIONS¹

BY THE HONORABLE CHARLES E. HUGHES

Secretary of State of the United States

It is an especial privilege to appear before the members of the Council of Foreign Relations because of their notable endeavor to facilitate an intelligent appreciation by our people of policies and action in the field of foreign affairs. Not only have you provided a forum but in establishing a quarterly review under highly competent direction you have made one of the most helpful contributions to a better understanding of foreign relations than has ever been made by private enterprise. The need is obvious.

I see among you those who have won eminence by sound judgment and exceptional facility in mastering facts, yet you constantly realize, I am sure, what slight opportunity you have for any but the hastiest consideration of the more difficult problems of the day so far as they lie outside your professional activities, and how impossible it is to reach any satisfactory independent conclusion unless you are aided by earlier special studies or by some experience which gives you background and perspective. Even then the old experience may be merely a trap to hold the mind in the clutch of preconceptions when it should be free for new excursions and impressions. If those in our community who are highly favored by training and variety of contacts are encountering such difficulties, what shall be said of the great host of our people—shrewd, fair-minded, but busy, preoccupied with the exigencies of the competitive struggle and living in the midst of strident appeals and multiplying allurements. With countless organizations we especially prize the few, such as yours, that seek the careful opinion, the sober matured judgment—an effort prosecuted, as your editors have said, with “a broad hospitality to divergent views” but none the less controlled by a sense of values and of responsibility.

It seems to me that I can make no better use of this occasion than to speak on certain recent questions and negotiations with which I have not been able to deal in other addresses. I shall not confine myself to a single topic and, although the various subjects of my remarks tonight are not directly connected with each other, I trust that taken with what I have previously said they will aid you in obtaining a conspectus of the present state of our foreign relations. The point of view of the responsible officer is not that of the debater or the reviewer; others may discuss, he must act on his best

¹ An address before the meeting of the Council of Foreign Relations held at the Ritz-Carlton Hotel, New York City, on the evening of Wednesday, January 23, 1924.

judgment. In most instances, when all the circumstances have been carefully considered, he is likely to feel that there is a certain inevitableness in that action. But I am here simply to report, not to claim agreement or challenge criticism.

Questions arising from the smuggling of intoxicating liquors.—Foreign nations are naturally tenacious of their rights upon the high seas, and, on the other hand, our Government can not look with indifference upon the attempts of hovering vessels, claiming the protection of foreign flags, illicitly to introduce their cargoes of liquors into the commerce of the United States. This Government must use every proper means to put a stop to this illegal traffic. It should be remembered, however, that authority with respect to the high seas can not be effectively conferred by acts of Congress if these are in contravention of international law, even though such legislative acts as municipal law would govern the decisions of our own courts.

Where international rights and obligations are involved, controversies not otherwise adjusted would naturally come before an international arbitral tribunal whose decisions would be governed by international law and would not be controlled by municipal law. This principle was explicitly recognized in the recent decision by Chief Justice Taft, as arbitrator in the controversy between Great Britain and Costa Rica, where the Chief Justice illustrated the point that, while in our system an act of Congress might for municipal purposes repeal a treaty, the United States could not thus get rid of an international obligation which would continue and would be enforced by an international arbitral tribunal. The Chief Justice said:

This is not an exceptional instance of an essential difference between the scope and effect of a decision by the highest tribunal of a country and of an international tribunal. The Constitution of the United States makes the Constitution, laws passed in pursuance thereof, and treaties of the United States the supreme law of the land. Under that provision, a treaty may repeal a statute and a statute may repeal a treaty. The Supreme Court can not under the Constitution recognize and enforce rights accruing to aliens under a treaty which Congress has repealed by statute. In an international tribunal, however, the unilateral repeal of a treaty by a statute would not affect the rights arising under it and its judgment would necessarily give effect to the treaty and hold the statute repealing it of no effect.

The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coast line. This has been asserted by our Government in making claims upon other Governments. With respect to Spain's claim of jurisdiction over the waters adjacent to Cuba, Secretary Seward wrote to the Spanish minister as follows:

It can not be admitted, nor indeed is Mr. Tassara understood to claim, that the mere assertion of a sovereign, by an act of legislation, however solemn, can have the effect to establish and fix its external

maritime jurisdiction. His right to a jurisdiction of three miles is derived, not from his own decrees, but from the law of nations, and exists even though he may never have proclaimed or asserted it by any decree or declaration whatsoever. He can not, by a mere decree, extend the limit and fix it at six miles, because if he could, he could in the same manner, and upon motives of interest, ambition, or even upon caprice, fix it at ten or twenty or fifty miles, without the consent or acquiescence of other powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained. . . .

In view of the considerations and facts which have been thus presented, the undersigned is obliged to state that the Government of the United States is not prepared to admit that the jurisdiction of Spain in the waters which surround the island of Cuba lawfully and rightfully extends beyond the customary limit of three miles.

Secretary Fish, writing to the British Minister in 1875, said: "We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast." And Secretary Evarts, in a communication to the Minister of Spain, concerning the visitation and firing upon certain American vessels near Cuba in 1880, said: "The Government must adhere to the three-mile rule as the jurisdictional limit, and the cases of visitation without that line seem not to be excused or excusable under that rule." The general principle was thus stated by the Supreme Court of the United States in the recent case of the *Cunard Steamship Company v. Mellon* (262 U. S. 100, 122): "It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles."

In the Bering Sea arbitration it was held that the United States had no jurisdiction in the Bering Sea fisheries beyond the three-mile limit and in the case of the British schooner *Sayward* the United States was required to compensate Great Britain for interfering with its sealing operations outside the three-mile limit. The American-British Claims Arbitration Tribunal in December, 1920, awarded damages against the United States on account of the interference by officers with the British vessel *Coquillam* because of transfer of cargo off the Pacific coast outside the three-mile limit.

It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three-mile limit and in order to avoid liability to other governments, it is important that in the enforcement of the laws of the United States this limit should be appropriately recognized. It does not follow, however, that this Government is entirely without power to protect itself from the abuses committed by hovering vessels. There may be such a direct connection between the operation of the vessel and the violation of the laws prescribed by the territorial sovereign as to

justify seizure even outside the three-mile limit. This may be illustrated by the case of "hot pursuit" where the vessel has committed an offense against those laws within territorial waters and is caught while trying to escape. The practice which permits the following and seizure of a foreign vessel which puts to sea in order to avoid detention for violation of the laws of the state whose waters it has entered, is based on the principle of necessity for the "effective administration of justice." (Westlake, Part I, p. 177.) And this extension of the right of the territorial state was voted unanimously by the Institute of International Law in 1894.

Another case is one where the hovering vessel, although lying outside the three-mile limit, communicates with the shore by its own boats in violation of the territorial law. Thus Lord Salisbury said, with respect to the British schooner *Araunah*, that Her Majesty's Government were "of opinion that, even if the *Araunah* at the time of the seizure were herself outside the three-mile territorial limit, the fact that she was, by means of her boats, carrying on fishing within Russian waters without the prescribed license warranted her seizure and confiscation according to the principles of the municipal law regulating the use of those waters." A case similar to this was that of the *Grace and Ruby* (283 Fed. 476).

It will be noted that in the case of the *Araunah* it was the vessel herself that was deemed subject to seizure outside the three-mile limit, and not simply her small boats, and this was manifestly because of the direct connection between the conduct of the vessel and the violation of the law of the territory. It may be urged with force that this principle should not be limited to the case of the use by the vessel of her own boats, where she is none the less effectively engaged, although using other boats, in the illegal introduction of her cargo into the commerce of the territory. Such a case was that of the *Henry L. Marshall*, recently decided by the Circuit Court of Appeals of the Second Circuit (292 Fed. 487-488). The *Marshall*, a vessel sailing under British registry, in 1921 obtained clearance from the Bahama Islands laden with a cargo of intoxicating liquors. She had two clearances, both dated the same date, signed by the same collector of revenue, one of which stated that she had cleared for Halifax with the cargo in question and the other that she had cleared for Gloucester, Mass., in ballast.

The same collector furnished two bills of health, simply differing as to destination. It was abundantly proved that the real object and only business of the *Marshall* was to peddle liquor along the coast of the United States and particularly did she pursue her vocation while lying from nine to ten miles off Atlantic City and sent liquor on shore pursuant to previous arrangements made in the United States by motor boats. She was seized outside the three-mile limit and condemned. Circuit Judge Hough, speaking for a unanimous court, after referring to the case of the *Grace and Ruby*, said: "The difference between the facts there presented and those at bar is that, instead of arranging to unload and deliver the cargo of the schooner

by, through, or with some assistance from the schooner's crew or equipment (as in the case cited), the whole matter was performed by a previous arrangement with those controlling the *Marshall* but with small boats that did not belong to the schooner and were not even partially manned by men from her crew. But it is just as true in this case as it was in the case of the *Grace and Ruby*, that 'the act of unlading, although beginning beyond the three-mile limit, continued until the liquor was landed.' "

The vessel was thus found to be engaged, not in the exercise of her admitted rights upon the high seas, but in unlawfully unloading her cargo into the territory of the United States, in "an actual introduction of a part thereof into the commerce of the United States" contrary to its laws. It should be added that while the British Government originally made a protest in this case, it was finally withdrawn upon the ground that the vessel was not of *bona fide* British registry, and it should be said that in this withdrawal the British Government did not acquiesce in the principle of the ruling. In view, however, of the historic practice of nations in the protection of their territory from the violation of their laws by hovering vessels, the United States Government can not admit that the accepted rules of international law preclude such action as that taken in the circumstances of the *Marshall* case.

But it is apparent that, whatever measures this Government may believe that it is free to adopt in accordance with the principles of international law, these, so far as they are practicable, are far from adequate to meet the exigency; and, further, the diplomatic history of the United States reveals the fact that maritime powers, including the United States itself, are highly sensitive to attempts by foreign authorities to seize their vessels on the high seas in time of peace. In each case of seizure there are likely to be serious questions of fact and law, and at any time there may be collisions of authority which would be embarrassing to friendly relations. It is precisely in matters of this description, where the sense of grievance and resentment are so easily aroused, that the effort should be made to reach an international agreement suited to the case. We need to put the measures that are required for the adequate enforcement of our laws on an impregnable basis and to invite and secure the friendly cooperation of the maritime powers.

Again, foreign powers have complained of what they regard as a departure from international comity through the maintenance of the present restrictions of law under which their vessels are not permitted to enter our waters or call at our ports if they have cargoes of liquors on board, although these may be kept under seal and are not to be delivered within the territory of the United States. Nations who fully appreciate our authority, and our right to enforce our own policy, can not understand such a restriction which interferes with their trade with countries other than our own. They can not understand why a ship from a foreign port with a cargo consigned to

another foreign port is unable even to traverse our waters, or to visit our ports, because the cargo on board, which is destined for other countries, is of the sort we do not wish for our own. In this situation there is the plainest opportunity for a fair agreement not in derogation of our principles but to aid in their proper enforcement—not only without the slightest departure from, but with a manifest increase in, the safeguards required for our protection against the introduction of intoxicating liquors.

Accordingly, negotiations have been undertaken to reach an appropriate international agreement upon this subject and I am happy to say that such an agreement has been concluded with Great Britain today. There are other Powers which I believe are quite ready to act in a similar way. This will be a long step toward removing causes of irritation and it is precisely as we remove such causes that we shall really make progress in furthering the interests of peace.

It is hardly necessary to observe that there is no intention on the part of this Government to violate, in the negotiation of such agreements, the provisions of the Constitution. The purpose is to facilitate their enforcement. I know there are some who have expressed doubt whether such an international agreement can be made under our Constitution. This doubt I do not entertain. As the Supreme Court of the United States has said, "It is not lightly to be assumed that in matters requiring national action, a power which must belong to and somewhere reside in every civilized government is not to be found." (*Missouri v. Holland*, 252 U. S. 415, 433.) It would be most extraordinary if the United States were in such a situation that such causes of international friction could not be removed by an exercise of the treaty-making power which in no way impaired the efficacy of our policy, but, on the other hand, greatly aided in preventing the illicit introduction of intoxicating liquors.

But, viewing the question in its technical aspect, it is quite sufficient to point out that the eighteenth amendment has expressly confided to the discretion of Congress the determination of penalties and forfeitures, and it is manifest that this discretion can be competently and wisely exercised in maintaining the morale of enforcement and in providing that just and adequate enforcement which does not interfere with the appropriate freedom of commerce, an interference with which would serve no interest of the United States, but would be to its most serious injury. Congress in the exercise of its discretion is undoubtedly entitled to protect the substantial interests of the country. Congress has already appreciated this authority and has acted accordingly in excepting from penalties and forfeitures transit through the Panama Canal, an exception which the Supreme Court in its recent decision has fully recognized as being within the competency of Congress. What Congress has thus done can equally be accomplished through the treaty-making power, which, under adequate restrictions, may put such cargoes as those to which I have referred, not destined for our

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ports or to be delivered within the United States, in the same status as those passing through the Panama Canal.

Mexican relations.—Recently, in connection with the centenary of the Monroe doctrine, I have had occasion to review our policy with respect to the Republics of this hemisphere, and I wish at this time merely to add a word as to our relations with Mexico. It is unnecessary for me to describe the difficulties of the past thirteen years. Turmoil and internecine strife produced political and economic instability and disregard of international obligations. We had the friendliest feelings for the people of Mexico and were sensible of their desire for social and political betterment, but revolutionary tendencies and chaotic conditions made it impossible to find a sound basis for intercourse. At last, under General Obregon's administration there was a restoration of stability; commerce and industry began to regain confidence; there was a hopeful endeavor to put the finances of the country on a better footing; provision was made for the payment of the foreign debt. When it appeared that there was a disposition to discharge the obligations which are incident to membership in the family of nations, this Government was glad to recognize the existing Government of Mexico and to resume diplomatic relations.

Two claims conventions were at once concluded—a special convention relating to claims arising from revolutionary disturbances, and a general convention dealing generally with the claims of the respective States and their nationals. Diplomatic relations were resumed and these conventions were concluded last September; the special convention has received the assent of the Mexican Senate and the general convention is about to be acted upon by that body. Both conventions have been submitted to the Senate of the United States.

After this happy result had been achieved, and as we were looking forward to a period of quiet and to opportunities of advantage to both peoples, suddenly there was an attempt to overthrow the established Government of Mexico by violence. It is plain that the purpose of those engaged in this enterprise of arms is simply to determine by forcible measures the succession to President Obregon. It is not a revolution instinct with the aspirations of an oppressed people; it is a matter of personal politics. It is an effort to seize the presidency; it means a subversion of all constitutional and orderly procedure. The contestants, seeking to overthrow the established government, have taken possession of certain portions of the Mexican territory and either are claiming tribute from peaceful and legitimate American commerce or are attempting to obstruct and destroy it.

In these circumstances the established Mexican Government asked the Government of the United States to sell to it a limited quantity of arms and munitions. The request was one which could not be ignored; it had to be granted or denied. This government had the arms and munitions close at hand; it did not need them and could sell them if it wished. If the request

had been denied, we should have turned a cold shoulder to the government with which we had recently established friendly relations and, whatever explanations we might make, we would in fact have given powerful encouragement to those who were attempting to seize the reins of government by force. The refusal to aid the established government would have thrown our moral influence on the side of those who were challenging the peace and order of Mexico, and we should have incurred a grave responsibility for the consequent disturbances. In granting the request, there was no question of intervention, no invasion of the sovereignty of Mexico, as we were acting at its instance and were exercising our undoubted right to sell arms to the existing government. Nor was there any departure from the principle involved in President Harding's policy as to the sale of arms.

That particular declaration was simply a feature of our well-known general policy as to the limitation of armaments. It is our fixed purpose that our surplus war equipment should not be employed in encouraging warfare by fostering militarism and the building up of the competitive armaments that threaten the peace of the world. It in no way precludes us from furnishing arms to aid in the putting down of insurrectionary attacks upon public order in a neighboring state whose peaceful development is especially important to us. Indeed, one of the grounds upon which, under President Harding's administration, this Government declined to become a party to the Convention of Saint Germain relating to the traffic in arms was that the convention not only left the signatory governments free to supply each other with arms *ad libitum* but prevented the sale of arms to governments not signatory, and it was then pointed out that this would prevent our government from selling arms to our neighboring republics not parties to the convention, however necessary that course might be to the maintenance of stability and peace in this hemisphere.

As the question is obviously one of expediency, each case rests on its own facts. So far as precedents are concerned, we have followed rather than departed from them. In standing for constitutional procedure and frowning upon attempts to conduct political campaigns by force of arms we create no precedent that embarrasses us. Many of our people are solicitous with respect to the contribution of the United States to the cause of peace. That duty and privilege begin at home. In aiding stability in this hemisphere, in throwing our influence in an entirely correct manner in favor of the development of constitutional government and against unwarrantable uprisings, in protecting the legitimate freedom of commerce, we are making the greatest contribution directly within our power, and in accord with our established traditions and manifest interest, to the cause of world peace. This hemisphere should be the exemplar of peace, and we look with confidence to the creation of a unity of sentiment of the American republics against resort to the brutal arbitrament of force in political controversies. To this end the United States gladly gives its cooperation.

The Near East, Turkey.—Let me now direct your attention to affairs in the Near East. The events of the past few years have created a new situation, and the difficulty in clarifying present problems is largely due to the fact that so many of our people discuss them in terms which belong to the past. While there was some consideration of Turkish questions in 1919, and certain inquiries were prosecuted, it was not until 1920, after the Austrian and Bulgarian treaties had been disposed of, that the Allies definitely took up the Turkish treaty. This treaty, called the Treaty of Sevres, was signed in August of that year. Its terms were severer than those of the European peace treaties, not only depriving the Turks of vast territories but imposing upon them an even greater measure of foreign control than had been the case before the war. In spite, however, of the Allied occupation of Constantinople, the Greek occupation of Smyrna and its hinterland, and the French occupation of Cilicia, the Turks refused to ratify the treaty. The Allies were not in a position to compel them to do so.

As one of the results of the Great War, a new spirit of nationalism and a desire for freedom from outside control had made itself felt in the Near East. Nowhere had the evangel of self-determination found a more eager response. The nationalistic movement was particularly significant in Turkey. That this movement had often been accompanied by violence is not to be wondered at, although it is nonetheless to be regretted. The outcome of the movement in Turkey was the establishment of a government which claimed the right to be dealt with as sovereign and which by its military achievements made good that claim.

As early as January, 1920, the so-called Turkish National Pact had been voted by the Ottoman Parliament which was then assembled at Constantinople. This pact set forth the aspirations of the Turks and later was adopted by the National Assembly at Angora as summarizing the object of the Turkish Nationalist movement. Among its provisions was the following:

Article VI. It is a fundamental condition of our life and continued existence that we, like every country, should enjoy complete independence and liberty in the matter of assuring the means of our development, in order that our national and economic development should be rendered possible and that it should be possible to conduct affairs in the form of a more up-to-date regular administration.

For this reason we are opposed to restrictions inimical to our development in political, judicial, financial, and other matters.

In March, 1921, the Allied Powers clearly appreciated that it would be impossible, short of armed allied military intervention in Turkey, to impose the Treaty of Sevres. It would seem that at no time was such armed allied intervention seriously considered, although from time to time certain of the Allied Powers gave a measure of support to the Greek forces in the hope that the latter would be able, through their victory over the Turks, to make

possible the realization of the Sevres treaty at least in part. There were unsuccessful attempts to revise the treaty. At last the total defeat of the Greek forces and the withdrawal of the Greek army from Anatolia completely changed the situation to the advantage of Turkey and effected the elimination of the Treaty of Sevres as a basis for negotiation. A victorious Turkish army being in complete control of Anatolia and threatening Constantinople, the Allied Powers intervened to bring about an armistice between Greece and Turkey which was signed at Mudania in October, 1922. The Lausanne conferences of 1922 and 1923 followed.

The Allies frankly recognized that the situation of 1918 no longer existed and that after the stubborn resistance of the Turks, culminating in their recapture of Smyrna, it was impossible to dictate the terms of peace. A treaty was therefore negotiated in which the Turks ceded very considerable territories and for the first time in their history agreed to open the Straits not only to merchant ships but to foreign warships, but in which the Allies, on the other hand, agreed to renounce their historic capitulatory rights in Turkey.

In 1919 and 1920 the question was directly presented to the Government of the United States as to the nature and extent of its participation in the political and territorial readjustments of the Near East. At that time the spokesmen for the Allied Powers at Paris suggested that the United States assume a mandate for Constantinople and Armenia. The former proposal was never presented for the consideration of the Congress, as it was clear as early as 1919 that the American people would not favor the assumption of a mandate over Constantinople, which would immediately and directly involve this Government in one of the most vexing political and territorial problems of the world—the storm center of historic rivalries and bitter contests.

When the question of an Armenian mandate was formerly presented in 1920 as a result of the action of the Allied representatives meeting at San Remo, the Congress declined to sanction it. It thus again became apparent that the United States Government was not prepared to intervene in Near Eastern affairs to the extent of assuming any obligations of a territorial character. This course was in accord with our traditional policy. The United States had taken no part in the Turkish settlements which were embodied in the treaties of Paris in 1856, of Berlin in 1878, or in those which followed the Balkan Wars of 1912 and 1913. Even during the World War we did not declare war on Turkey or take the initiative in breaking relations with that country, notwithstanding the serious provocation, from a humanitarian standpoint, of the extensive Armenian deportations. Presumably it was felt that the policy then adopted was better calculated to enable the United States to exert its influence and to protect its interests so long as this country was not to join the military operations on the Near Eastern front.

If there ever was a time when we could have successfully intervened and have backed up our intervention by armed forces, it was early in 1919 when we had a large army abroad and were in a position to prosecute such a policy if deemed advisable. But this opportunity passed. It should be added that, contrary to an impression which is somewhat widespread in this country, this Government, while it has always exerted its influence in a humanitarian way, has not assumed political obligations with respect to the Armenians or other Christian minorities in the Near East. Treaties concluded by other powers undertook, however, to deal with such questions. This Government took no part in the negotiation of the Treaty of Sevres.

Such, then, was the situation prior to the year 1921. In developing our relations with the Near East subsequently, it was necessary to take into account the established policy of the Government and at the same time to serve American interests and humanitarian ends. It should also be remembered that a large part of the distress in the Near East has been caused by encouraging action which failed of adequate support. At various times the Armenians and Greeks have been encouraged to take up arms, later to be left to their own devices. This Government, however, would not be justified in promoting such a policy on the part of others which it was not prepared itself adequately to sustain. It has no mandate from the people to intervene by arms and thus to impose by force a solution of the problems of the Near East. And, for this very reason, it could not essay the rôle of a dictator in order to determine how others should solve these problems.

This, however, did not prevent this country from cooperating in a spirit of helpfulness and from bringing, as it has brought, its moral influence to aid in dealing with a situation of the utmost difficulty. This influence was brought to bear at the Lausanne Conference, where the efforts of the American representatives undoubtedly contributed in no small degree to the final agreement upon provisions regarding the protection of minorities, the recognition of charitable, educational, and philanthropic institutions, the appointment of judicial advisers and the maintenance of equality of opportunity. As I have said, a state of war had not existed between the United States and Turkey, and the course of events following the German War had reaffirmed the historic policy of refraining from intervention in political and territorial readjustments. Turkey had severed diplomatic relations with us in 1917, however, and these had not been resumed. But the formal conclusion of peace between the Allies and Turkey, entailing as it would the resumption of full diplomatic and consular relations, would leave the United States, unless appropriate action were taken, in a relatively disadvantageous position. Accordingly, negotiations were undertaken between American and Turkish representatives which resulted in the treaty of amity and commerce and the extradition treaty signed on August 6 last.

The treaty of amity and commerce followed very closely the Allied treaty without its territorial, political, and financial features. The United

States gained the same general rights and privileges as the Allies, including the freedom of the Straits, and like the Allies consented to the abrogation of the capitulations, that is, of the exercise of the ex-territorial rights in Turkey which the Turks regarded as in derogation of their sovereignty.

In making this important decision the American representatives were obliged to take account of the following considerations. It was quite apparent that the only basis upon which negotiations could be conducted was that of most-favored-nation treatment and reciprocity. Either the Turks were to be dealt with on this footing or not at all. In these circumstances three courses were open to us: (1) To compel the Turks by force to give us better terms than the Allies; (2) not to negotiate at all; or (3) to negotiate with the Turks on equal terms as with a state enjoying an unqualified sovereignty.

The first course was out of the question. However desirable the maintenance of ex-territorial rights hitherto enjoyed might be, it was obvious that the public opinion of this country would not countenance a war for the purpose of maintaining them. Neither did it appear to be practicable to forego negotiations, in an attempt to maintain the *status quo*. After the armistice of 1918, we sent to Constantinople a high commissioner, with a naval detachment under his command, and in spite of his unofficial status in relation to the Turkish authorities he has succeeded in affording American interests appropriate protection. But this anomalous situation could not continue indefinitely. When the treaty of peace between the Allies and Turkey comes into effect, and diplomatic and consular officials of the Allied Powers return to Turkey, we should find ourselves in an extremely difficult position if action meanwhile had not been taken to regularize our own position, and in the absence of a treaty American interests in Turkey would be without adequate safeguards. In this event, the humanitarian interests which are closest to the American heart would suffer. It was also perfectly clear that no period of waiting would avail to secure for us ex-territorial rights which on their part the Allies surrendered.

In these circumstances, the only practicable course was to negotiate a treaty as with a fully sovereign state. If such a treaty falls short of expectations, especially in that it acquiesces in the abrogation of the capitulations, it should not be forgotten that the only way to maintain the capitulations was to fight for them. It should also be borne in mind (1) that the Lausanne treaty is such a treaty as would be negotiated with any other sovereign state, (2) that it gives us the same rights as other countries will enjoy under the new régime, and (3) that by regularizing our relations with Turkey, now interrupted for nearly seven years, it will provide safeguards for American educational, philanthropic, and commercial interests in Turkey.

Let me emphasize a further point. At no stage in the negotiations was the American position determined by the so-called Chester concession.

This had been granted before negotiations of our treaty with Turkey had been begun. This Government took no part in securing it; this Government made no barter of any of its rights for this or any other concession. Our position is a simple one. We maintain the policy of the open door or equality of commercial opportunity; we demand a square deal for our nationals. We objected to the alleged concession to the Turkish Petroleum Company owned by foreign interests because it had never been validly granted, and in so doing we stood for American rights generally and not for any particular interest. Opening the door for American nationals we give them impartial and appropriate diplomatic support in the assertion of what appear to be their legal rights, but without otherwise involving this Government.

During the course of our recent negotiations, the Department of State was in frequent consultation with those whose interests in Turkey it is its privilege and duty properly to protect, particularly those whose humanitarian enterprises have long been established. They have clearly indicated their accord with the position that the present situation in Turkey should be frankly faced and that the Turkish authorities should have an opportunity to show that their expressed desire for American friendship and help and their willingness to protect American interests are sincere. It is on this basis that our policy toward Turkey is being developed. Let it be understood that Turkey, while insistent upon unqualified sovereign rights, does not reject the international obligations which are correlative to such rights. Let it also be appreciated that Turkey is not endeavoring to undermine our institutions, to penetrate our labor organizations by pernicious propaganda, and to foment disorder and conspiracies against our domestic peace in the interest of a world revolution.

No one is more competent to speak on the subject of the treaty than Dr. James L. Barton, secretary of the American Board of Commissioners for Foreign Missions. Permit me to quote from his recent letter (November 24, 1923):

To say that I have followed with keen interest the making of this treaty and its fate up to the present time is to express but mildly my own feelings as well as the feeling of the American board and its friends. While the treaty does not contain all that we would like, yet I am sure I express the judgment of the officers of the American board and, so far as I know, the missionaries both on the field and here at home when I say that it is our earnest hope that the treaty will be ratified by the Senate and that without acrimonious debate. We are convinced that this is the best treaty that could be secured under the circumstances, but that it will furnish a basis for negotiations and for securing privileges not covered in the treaty.

If the treaty should be rejected, I am convinced that the continuance of American institutions in Turkey, with their large invested interests, would be jeopardized. Under the treaty there are grounds for believing that they will be permitted to continue. I refer to educational, re-

ligious, medical, industrial, and philanthropic enterprises hitherto carried on by Americans, representing large American investments in Turkey. There are indications that the Government will look with increasing favor upon the continuation of these institutions and grant them enlarging privileges. This has already taken place in Smyrna, Tarsus, and at some other points.

Let me add to this the statement of the distinguished educator, Dr. Caleb F. Gates, president of Robert College of Constantinople. After referring to the views of objectors, he says:

Let us ask for a moment why it is that we have not made a treaty more in conformity with the wishes of so many of the American people. Is it because the American representatives were not skillful and allowed themselves to be outwitted by the Turks? The American representatives acquitted themselves exceedingly well; they gained the respect of their opponents as well as of the representatives of the Allied Powers. They came out of the conference with a reputation enhanced by the ability and fairness they had shown, and they gained for their country fully as much as the representatives of the Allied Powers gained for theirs. . . . The Turks were determined to become sovereign in their own domain, and they were willing and prepared to fight in order to obtain this sovereignty while the Allies were not. Even those Americans who now denounce this treaty as unsatisfactory were determined that their country should not go to war over these questions. . . . It is the only kind of a treaty which could have been made under the circumstances, when one party knew exactly what they wanted and were ready to fight to obtain it, and the other party was not willing to fight, but still wished to retain the former conditions. . . . As to the treaty itself, what does it give to us? It gives the good will of the Turks instead of their ill will. That is certainly worth something to all who live and work in Turkey. To them the treaty affords an opportunity to work out the problems which their life in Turkey presents and to exercise what influence they may possess in favor of the right. It still leaves an opportunity for missionaries and educators to try to make the principles of righteousness known and practiced in Turkey and it gives to business men a field for their legitimate activities. . . . The schools and colleges established by Americans are carrying on their work and many of those that had been closed are reopening.

In order to accord adequate protection to American interests in the Near East during the period following the Great War, the Department of State has maintained its representatives throughout this area and a naval force has been stationed in Near Eastern waters since 1919. Until October, 1922, this force consisted of from three to nine destroyers with various other craft from time to time. When news was received of the Smyrna disaster 12 additional destroyers were immediately dispatched, arriving in Turkish waters during October of that year. These vessels have been of inestimable service to the representatives of the Department of State and to all American interests in the Near East. Through their radio they have furnished com-

munication when no other means were available. They have transported American missionaries, philanthropists, relief workers, and business men, saving days and weeks of time when no other adequate means of transportation were available. They have assisted in the evacuation of refugees and they have been instrumental in serving manifold humanitarian purposes. It is a pleasure to commend the admirable work that has been performed by the officers and men of these vessels.

Mandated territories.—Under the recent peace settlement between the Allied Powers and Turkey, the Arab portion of the former Turkish Empire is detached from Turkey. In Syria a mandate is being exercised by France and in Palestine by Great Britain, while in Mesopotamia a native kingdom is being developed under British guidance. These territorial changes have made it incumbent upon the United States to readjust its treaty relations which, with respect to these territories, were formerly controlled by our treaty with Turkey. In its correspondence with the British and French Governments in relation to these territories, this Government has made clear its position that the changed situation is a consequence of the common victory of the Allied and Associated Powers over Germany, and that in view of its relation to this victory the United States is entitled to insist that no measure could properly be taken which would subject the United States to discrimination, or deprive its nationals within these territories of equality of treatment with the nationals of any other power.

The rights of states which are members of the League of Nations are set forth in the terms of the French mandate for Syria and of the British mandate for Palestine, respectively. As the United States is not a member of the League of Nations, separate agreements are being negotiated with Great Britain and France under which the United States is to secure in these territories all rights and privileges enjoyed by states which are members of the League of Nations. Under these treaties American interests would be adequately safeguarded. There has been a development in Mesopotamia along slightly different lines, in view of the establishment of an Arab government with which Great Britain has concluded a treaty, and as soon as this situation has been further clarified this Government will not fail to take proper steps to regularize its relations with the appropriate authorities of Irak with a view to the protection in Mesopotamia, as in Syria and Palestine, of American interests.

Persia.—The Persian Government more than a year ago sought the aid of American experts in the reorganization of their finances. While this Government could not assume any responsibility in this matter, it was glad that the services of competent American citizens could be secured, and a financial mission accordingly proceeded to Persia and for the past year has been rendering important expert aid, as Persian officials, to the Persian ministers in reorganizing the financial administration of the country. While this is not an official mission of this country in any sense, it has helped to

cement the relations between the two countries, making more firm the ties of mutual friendship and esteem.

Greece.—The death of the late King Alexander of Greece was followed in December, 1920, by the return to Athens of Constantine. In accordance with the usual practice in the case of monarchical countries, the Greek representative in Washington tendered new letters of credence the acceptance of which would have constituted formal recognition of the new government. In view of the special circumstances which attended Constantine's return to Athens, it was deemed important, before according recognition, to take into account not only the part that Constantine had played in the war but also the policy of the new régime with regard to the acts and obligations of its predecessor and the attitude of the associates of the United States in the war. With respect to Constantine's attitude toward the engagements of the former government, there was for a time an uncertainty whether Constantine considered the government of King Alexander as a *de jure* government. This was important, for if the Government of the United States had extended recognition it might have put itself in a position of acquiescing in a possible review of the acts of King Alexander's Government which had borrowed substantial sums from the United States. It will also be recalled that none of the principal Allied Powers recognized Constantine subsequent to his return.

So far as the records indicate, these considerations controlled the policy of the United States Government during the period subsequent to Constantine's return and prior to March, 1921. Upon the change of administration the question arose whether there was a sufficient reason for changing this policy and for taking a course of action different from that followed by the Allied Powers. Other considerations had intervened making affirmative action in the matter of recognition undesirable. Constantine developed a militaristic policy in Asia Minor, in which Greece was already engaged, by which he desired to justify his hold upon the throne.

Separate action by the United States at this time could hardly have been interpreted otherwise than as an expression of sympathy and support by this Government for this policy of Constantine and as an indirect participation in the politics of the Near East which it was desired to avoid. The wisdom of refusing recognition was indicated by the overthrow of Constantine when Greek military plans in Asia Minor failed, an overthrow which was attended by a complete revolution. It will be recalled that Constantine fled the country and that his prominent supporters and cabinet ministers were arrested and after summary trials were executed. The British Government, which previously had maintained a chargé d'affaires in Athens, although not recognizing Constantine, withdrew this representative, while the representatives of other powers, including that of the United States, took occasion to interpret to the Greek authorities the unfortunate impression which the execution of the Greek ministers had caused.

The régime which succeeded that of Constantine was frankly based on military power and did not regularize its position by holding elections. Meanwhile the negotiation of a treaty of peace between the Allied Powers, Greece and Turkey, was undertaken at Lausanne, and it seemed undesirable, pending the conclusion of these negotiations, for the United States to take separate action in the matter of recognition.

The situation has now materially changed. The Lausanne negotiations have been concluded, peace has now been ratified by Greece and Turkey, and elections were held in Greece on December 16, 1923. These elections, it is hoped, will result in the establishment of a government which will enable this Government to extend formal recognition. The fact that recognition has not been extended during the past three years does not indicate an attitude of unfriendliness toward the Greek people. What American agencies have done in assisting the refugees in Greece is clear evidence to the contrary, and this humanitarian work could not have been carried out more effectively even if formal relations had been resumed, thanks to the initiative of American agencies and the helpful cooperation of the Greek authorities.

Egypt.—I should not omit the mention of the recognition of Egypt, where we have had a minister for a considerable time, and whose minister in turn we are now receiving. We have a deep interest in the most cordial relations with Egypt and it is interesting to note that the Egyptian Government has been anxious to take advantage of the facilities offered in this country for perfecting the technical education of Egyptian students, particularly along lines of trade and engineering. A group of students came to the United States a year ago and other similar student missions are now on their way.

In conclusion, I may say that the new spirit of the Near East must be met sympathetically, not by arms, not by attempts at dictatorship or by meddling interventions, but by candor, directness, and just appreciation of nationalistic aims and by a firm but friendly insistence upon the discharge of those international obligations, the recognition of which affords the only satisfactory basis for the intercourse of nations. In this way the Orient and the Occident may find ground for cooperation and for the maintenance of peace sustained by the reciprocal advantages of cultural relations.

AN INTRODUCTION TO THE HISTORY OF INTERNATIONAL LAW¹

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I. THE ANCIENT WORLD

For a long time writers on international law took it for granted that the subject of their studies was a relatively recent product of modern civilization, and that the ancient world did not know any system of international law. If we go back to the literature of the nineteenth century, we can find a certain feeling of pride among internationalists that international law was one of the best fruits of our civilization and that it was a system which distinguished us from the ancient barbarians. Some of these writers paid special attention to this question of origins and endeavored to explain why the ancient world never could have had any international law.²

As time went on, however, and modern historical investigations were constantly and persistently digging deeper into the past ages, this theory had to be considerably altered and finally discarded. Many interesting studies have appeared, some concerning Greece,³ others relating to more ancient times, but all of them bringing to light a whole mass of material which confirms the exact opposite point of view, namely, that the ancient world knew very well the meaning of international relations and was making use of an elaborate system of institutions, well developed and firmly established. The laws of Hammurabi, the excavations and papyri of Egypt, the tablets of Babylonia and Assyria, etc., brought us an abundance of material, so that there can be no more doubt on the question. These results may be summed up in a short sentence: as soon as there developed a cultural center of a certain level of civilization, a state of some prominence, there grew up simultaneously relations with the outside world that soon took the shape

¹ This article is based upon the first of a series of lectures on "The Historical Development of International Law from the Seventeenth Century," delivered by the author before the Academy of International Law at The Hague. This lecture was delivered on July 16, 1923, and was the first lecture delivered before the Academy, which was formally opened in the Peace Palace on July 14, 1923. (See editorial in the October, 1923, number of this JOURNAL, Vol. 17, page 746.)—EDITOR.

² Laurent is probably the most prominent representative of that school of thought. This point of view was defended also by Th. Martens, on whose famous text book more than one generation of lawyers based their education.

³ Sir Paul Vinogradoff, *Outlines of Historical Jurisprudence*, Vol. II.

of a whole system of institutions. In other words, such a system was the necessary consequence of any civilization and was as old as human culture in general. One matter of importance must be remembered in this connection: the ancient peoples of Asia or Africa were well acquainted with international relations and law. Further, there is another striking consequence: the careful analysis of these relations of different ancient civilizations reveals a remarkable similarity in their main lines of development. Take, for example, the history of ambassadorial missions, the question of extradition of fugitive criminals, the protection of certain classes of foreigners, and, above all, the sanctity of international contracts. In the growth of all these institutions identical principles prevail everywhere, in Sumer or Thebes, in Nineveh or Athens, and down to Rome.

The explanation of the mistake of our teachers of the nineteenth century is a very simple one. They were not acquainted with the history of the ancient civilizations. In their time that branch of historical research was hardly started; most facts concerning those bygone ages were absolutely unknown. Martens or Wheaton, Laurent or Coleman Phillipson, thus invariably commenced their detailed investigations with the Treaty of Westphalia, 1648. Today they seem dilettante, naïvely convinced that international law was a product of modern times only. New horizons have been opened to us, new vistas have been disclosed into the past ages, that compel us to change our point of view and accept new methods of research. We have now some excellent works concerning the ancient world. For instance, Marcus Niebuhr Tod, *International Arbitration among the Greeks*, Oxford, 1913; A. Reader, *L'arbitrage international chez les Hellènes*, 1912; E. Täubler, *Imperium Romanum: Studien zur Entwicklungsgeschichte des Römischen Reichs*, Staatsverträge, 1913; von Scala, *Die Staatsverträge des Altertums*, Leipzig, 1898. But most important are the first attempts of generalization in this field, of summing up the results of recent historical investigation, by Chybichovski, Vinogradoff and Rostovsteff, who give us an entirely new and intensely interesting picture of ancient social and political life.⁴

Thus, under the influence of these new studies, our point of view concerning the historical development of international relations and law has necessarily but drastically changed. We know now that it is not *our* civilization that created these institutions, but that *every* civilization possessed whole systems of them; that they are first a necessary product of social life, and secondly, that they had everywhere many traits in common and do not belong exclusively, as was formerly supposed, to Europe. It is to be regretted that these first attempts have not yet been followed by a general treatise drawing attention to the modern historical investigations of ancient epochs and showing the gradual growth of institutions of international law and of their great and guiding principles.

⁴ Chybichovski, *Antikes Völkerrecht*; Vinogradoff, *Outline of Historical Jurisprudence*, Vol. II, 1923; M. Rostovtseff, *American Historical Review*, January, 1921.

The fact that the fundamental principles of international intercourse always were and are even in our day identical all over the world proves their inward, potential strength and vitality. But at the same time this also justifies the theory that international law is a necessary consequence of any civilization.

If we glance at the contents of those ancient systems of international law, we easily become aware of two things. First, that in this domain there always existed a distinct predominance of moral ideas or conceptions; those moral ideas conquer and subdue brute force and firmly control it. Secondly, that the fundamental principles are not so many in numbers. Among them the most important one is the principle of international obligations, the sanctity of the international contract, binding the state or nation, king or people. Another one concerns the establishment of channels of communications between two or several states and governments, growing into a law of embassies, with moral and legal guarantees for ambassadors and envoys from one country to another.

Thus gradually became established and mutually recognized certain ways of international behavior, certain customs and usages, relating in particular to war and its conduct. The binding force of all these international obligations has remained exactly the same since the times of Rameses or Murdoc, Pericles and Cicero, to those of Napoleon, George V of England or the Tsars of Russia. The mere fact of neighborly cohabitation creates moral and legal obligations, which in the course of time crystallize into a system of international law. In other words, the latter grows up and develops in exactly the same way *outside* of the state, as legal institutions form and crystallize *inside* the state,—from the mere fact of the social life of man.

We must mention, however, one important exception. At certain historical periods one civilization or one people seem to develop so rapidly and outgrow their environment to such an extent that their relations with the outside world are no longer normal; their acquired superiority in many respects weighs heavily over their neighbors.

This leads to two conclusions, namely, that a certain principle of equality is of the essence of international relations and law; and further, that when such a state of equality does not exist, international relations acquire certain unusual characteristics. We find examples of such exceptional historical periods in the history of Greece and more so in Rome. Surrounded by "barbarians," neither Greece nor Rome could acknowledge the principle of equality, and in consequence their international relations possessed some very special traits. This explains, incidentally, why the writers of the nineteenth century were partly right when they pointed out the absence in Rome of normal international relations. They were wrong, however, in exaggerating this and denying the existence of any international law at all.

The other point concerning the principle of equality has a much greater theoretical value. It implies that international relations thrive and inter-

national law crystallizes normally only in those epochs when there existed simultaneously two or several states or nations possessing more or less equal cultural standards. Only among relatively equal states does the sanctity of international obligations, which, as we saw, is the moral foundation of all international law, find a guaranteed existence and recognition. Egypt, for instance, had Babylonia as partner; in the case of Greece, we see the existence of inter-state relations and federations.

Let us glance at the recent discoveries concerning Sumer, dating back to the fourth millennium B.C. Among them was a treaty signed by King Entemena regulating the boundaries between his Kingdom of Lagash and the neighboring one of Umma. According to this international agreement an umpire or arbiter was appointed in the person of another king, Misilim of Kish. Thus we see that a whole legal system already existed in those distant ages, well developed and often used, a system in which we find included arbitral proceedings, which constitute one of the most advanced institutions of international law. The history of Egypt provides several other examples of the same kind. The famous treaty of Rameses II, concluded in 1280 B.C. with the vanquished king Hattusili of the Hittites, is the best known case. This was not only a treaty of peace imposed on a vanquished opponent, but an alliance for future cooperation, establishing in addition a complicated system of extradition of political refugees, which also show us highly developed conceptions of international law.

Dating from a later period were the treaties of the Cretans in the Mediterranean, the Mitanis of Mesopotamia, the Phoenicians, Philistines, Hebrews, and many other peoples of Asia Minor. The excavations of Tel-el-amarna proved to be a veritable treasure for the study of the international relations of those civilizations. The culture of these peoples must have been very high. This is confirmed by the voluminous diplomatic correspondence and by the existence of so many mutual agreements and treaties. The latter would be the pride of any foreign office.

One more point should be mentioned concerning this ancient epoch. The system of international law of those days found its sanction in religion. Law and religion were invariably closely bound together. According to the conception of the ancients, they belonged to the same domain of morals. Every treaty or agreement, every institution involving an international obligation, had its counterpart in some sort of religious sanction. The outward expression of this we find in religious formulas or ceremonies, meant to impress the people and bind the kings and their governments. Most prominent in this respect was the rôle played by the religious oath, taken by the contracting Powers at the conclusion of an obligation. The force and stability of international agreements by these means were perhaps even better guaranteed than in our times. They certainly were in no way less effective or less binding than in the succeeding periods of the history of civilization.

II. GREECE

As in the case of preceding ancient civilizations, the historians of international law doubted or denied the existence of such institutions in the history of Greece. Recent scientific investigations have also challenged this point of view. The works of M. N. Tod, A. Reader, Chybichovsky, and Vinogradoff⁵ have shown that Greece had institutions of international relations and law. This was the natural result of her intense commerce and constant interrelations outside, as well as inside, of the community of independent, but simultaneously interdependent, Greek cities. There is no special object in making any distinction between these two forms of interrelations of the Greek cities among themselves, on the one hand, and with the outside world, Asia Minor, Northern Africa or the Black Sea colonies, on the other; their essence and fundamental principles were always the same.

We must remember that there existed at all times an economic interdependence between the different Greek cities, in Europe, as well as in Asia and Africa. Thus, for instance, wealthy and prosperous Attica, having poor soil, badly needed food importation; other cities or communities had to provide her with the necessary corn supplies. The exchange of commercial goods and products was always intense among Greek cities, trade was prosperous, citizens were easily and frequently moving from one place to another. This led to the establishment of all sorts of legal institutions for the protection of foreigners, of certain agencies abroad, of special missions sent out to conduct legal or diplomatic transactions, etc. Thus there grew up mutual obligations, treaties and contracts, as well as permanent channels of diplomatic intercourse.

In consequence of their high standard of civilization and finely developed moral sense of justice, the Greeks had no difficulty in accepting and further developing the fundamental principles of international relations of the ancient world: the idea of the sanctity of treaty obligations and the necessity of having regularly established channels of communication, embassies or missions abroad. The person of an ambassador was inviolable and protected by law and custom; he enjoyed special "extraterritorial" privileges, as the municipal law could not reach him, and so forth. In all these cases we have merely the further logical development of institutions created, accepted and established by the ancient world. The only thing that must be added is that in Greece they were better guaranteed and more elaborately worked out.

In practice, however, the Greeks went much further than the Egyptians or Babylonians; they created in addition to the old institutions many new ones. This was in part the case with the protection of foreigners and of their interests. Thus, for instance, we find in Greece special guardians of

⁵ Cf. the works cited above, but especially Sir Paul Vinogradoff, *op. cit.*, Vol. II.

hospitality, the *proxenoi*, who functioned in the fifth century as consuls, entrusted sometimes even with diplomatic functions. But they were invariably citizens of the town where they lived and worked, and not outsiders nor citizens of the town which they represented. Further, there were established special courts for handling the jurisdiction over foreigners, the *xenikon dicasterion*, with their presiding judges, the *xonodicoi*. The *polemarchos* is another instance of an official who cared for foreigners. All of these officials were there to protect foreign rights and interests, administering justice to the outsiders and non-citizens.

We must also mention the development of the institution of extradition of criminals which acquired in this period very definite legal forms. But, as in the preceding centuries, reprisals and self-help were still frequent; they were looked upon as a common and quite legitimate means; mutual raids, attacks and devastation often befell not only opponents, but quite innocent neighbors, just as in the family, aggressiveness produced attacks not only against faulty relatives, but also against unsuspecting outsiders. Such breaches of law and contract cannot be cited, however, as proof of the non-existence of law or contract in general.

Gradually there developed one important consequence, namely, the generalizations of law, the general rules of common law, that are so useful to the present-day historians for the interpretation of Greek public life. One must remember in this connection that all those theories and ideals were in close relationship with the religious and literary life of the epoch; they were invariably closely interwoven and mutually influenced one another.

Finally, we must point out one more important institution of international law which found in Greece a wonderful development—the political federations, like the Amphictionic League.⁶ With the idea of federation there came a better understanding of another institution, that of arbitration. It is interesting to note that, just as at present, there existed no real sanction for either; they were always founded on a mutual agreement and on a clear understanding of the painful consequences that would necessarily follow the breaking of such contracts.

The intense and constant intercourse between the Greek city-states called forth necessarily the detailed development of ambassadorial relations; a whole system gradually crystallized to define and protect those relations, the organs as well as their functions. It was recognized everywhere that the envoy had a specially privileged position; his person was inviolable and sacred, his status abroad was protected by the principle of extraterritoriality; he was exempt from municipal and local laws and taxation, and so forth. And again, the sanction of these institutions was more moral than legal, but just as safe as in our day.

Unfortunately, there came one of those great storms that periodically sweep the world, tearing down well established and flourishing civilizations.

⁶ Cf. Scala, *op. cit.*, and Tod, *op. cit.*

The Peloponesian War seemed to have uprooted the whole Greek culture; force triumphed over moral ideals and many of the old institutions seemed to have perished forever. The Greek civilization crumbled to pieces and went down in ashes under the Persian onslaught. And yet,—as time went on, like a phoenix out of these ashes, the civilizing ideals and principles arose once more in a new world and with new strength. The French aptly call them "*Les idées civilisatrices*," ideals that inspire life and create its moral stamina. Another empire, more practical and more powerful, was destined to carry on the cultural influences of the ancient world and Greece.

But even during the worst period of devastation and warfare, certain influences of international institutions were felt nevertheless. We can cite, for example, the sanctity of the sepulchre, recognized even by the barbarians, the protection of those refugees who sought safety in temples, where the enemy's vengeance could not reach them.

III. ROME

Rome in many ways inherited the ideals and principles founded by the preceding civilizations, though the Roman conception of international relations was somewhat different from that of the Greeks. It was more primitive, simple and elementary. And the reason for this difference is that Rome was surrounded by neighbors far inferior in civilization and culture, mostly hostile, and who looked upon the Romans only as conquerors and oppressors. It was not without good reason that the Romans called these tribes and peoples *hostis*. In consequence, the relations of Rome with the outside world were mostly inimical. There was constant war between them and there was absent one very important element of international law: the equality of the contracting states. That is why most of the Roman alliances were concluded on the basis of a *foedus inaequalis*.

Moreover, there appeared another important consequence. The Romans tried to justify their aggressiveness by making the distinction between just and unjust wars. Later on, in the following epoch of the Middle Ages, this distinction played a most important rôle. The just wars were those commenced by Rome and carried on according to her own religious formulas and moral ideas. Hence, the motives of a war could now be judged and criticized, whereas previously they were accepted as mere facts.

The Roman system of international relations and principles on which these relations were based was embodied in the well-known *jus fetiale*, interpreted and applied by the fetial college (*Collegium Fetialum*). There existed elaborate ceremonies for the declaration of war. In a later period (fifth century), however, these ceremonies gradually deteriorated and disappeared. War was only the *ultima ratio*, the last means, to be used only if all others failed or were inaccessible. Further, there existed many ceremonies and formalities in connection with the sending of ambassadorial missions. The envoy's work abroad, his reception at home, in Rome, his

rights and privileges, the principle of extraterritoriality, etc., all were regulated by the fetial law and sanctioned by religious rituals. Much attention was paid to the forms of concluding treaties with other states or peoples; special sacramental formulas were used, often very complex and intricate. Occasionally Rome made use of this complexity of her international law to find a way out of some disagreeable treaty and thus took a mean advantage, getting rid of an understanding by invoking a breach of formulas. It was considered quite just to fool the barbarians in this way. The Romans firmly believed that the gods took a personal part in the conduct of international relations, protecting Rome from the barbarians. The most interesting and impressive ceremony was certainly that of the reception of foreign ambassadors, on a platform (the *grecoastasis*) specially built for the purpose, where the foreign envoys had to await the arrival of the Senate.

Many internationalists of the nineteenth century believed that the whole system of international relations and law of the Romans was embodied in a special system known as the *jus gentium*. Historical investigations proved, however, that the latter was nothing else but the Roman civil law applied to the special circumstances concerning the foreigners and the outside non-Roman world. With the remarkable growth of Rome there developed foreign commercial relations, bringing to Rome hosts of foreigners. They came for trade and enjoyment in steadily increasing numbers. The Romans were thus forced to deal with a numerous and heterogeneous element of strangers, to whom they endeavored to apply their civil law institutions. A special functionary was created, the *praetor peregrinus*, to administer this new law, as distinct from the *praetor urbanus*, who administered the civil law to the Roman citizen. As time went on the *praetor peregrinus*, meeting all sorts of individual difficulties, began to insert new additions, new interpretations, new ideas into the Roman civil law. This became a sort of comparative jurisprudence. Then there followed a gradual insertion of philosophical ideas, later explained and interpreted by legal teachers and philosophers. Such was, for instance, the school of stoics, with their theory of the *jus naturae*, the law of reason, by which they tried to explain the application of Roman law to foreign systems of law.

The fundamental principles on which the new system was built were the old ones, of Roman civil law. The new influences and changes came however from other nations. It was under these influences that the young *jus gentium* was crystallizing and growing up. For several succeeding centuries Roman law remained the essential skeleton, the main foundation on which and around which the new institutions were forming, and very naturally the influences were reciprocal.

The famous *Pax Romana* with its tremendous powers of cultural conquest was the most important and potent source of influence in this domain. The principles of international intercourse, the institutions of international law, the ideals of international relations, all found in the *Pax Romana* the

main channel of expansion, spreading over the whole world as it was known in those days.

Again, we see in this system two main ideas dominating above everything else. First, the idea of the sanctity of international obligations, implying that the international contract was binding on the power of the state, very similar in principle to the private contract concluded between two individual citizens. Secondly, there was firmly established the idea of the necessity for channels of international communications, of special organs or institutions to carry on international relations. The first point implies the theory of international law, the second was the basis of its practice.

In this latter respect very much was accomplished by the Romans, thanks to their masterful handling of legal and practical matters. The ambassadorial immunities, for example, were put into a clear system. Cicero defined it with his usual acuteness in the following manner: "The inviolability of ambassadors is protected by divine and human laws; their person is sacred and inviolable not only between allies, but also during their sojourn among enemies." It is really a remarkable picture of the ambassadorial institution of those days. The Romans sent their ambassadors, their *nuntii*, *missi*, *legati*, to many of their neighbors, whether conquered or allied, to the Franks, the Gauls, the Burgundians, etc. These ambassadors carried with them, of course, the Roman ideals of international relations, thus spreading the Roman influences into many parts of the world. The Roman envoys seldom had written instructions; the latter were usually given to them orally, but their appointment and departure to foreign lands were always accompanied by various ceremonies and sanctioned by certain religious formulas. Their immunity was secured by a specially established *wergeld*, which was to be paid in cases of assassination, injury, or insult. Further, the barbarian nation which received a Roman ambassador was obliged to provide him with lodgings, take care of his provisions and food and give him a festive reception on his arrival. Reciprocally Rome received the ambassadors from other nations with special honors. For this purpose there existed in Rome a certain official, the *magister officiorum*, or master of ceremonies, who had to take care of the foreign envoys and prepare the reception. Some of the neighbors, later on, also established a similar office for the reception of Roman ambassadors. One thing, however, the Romans steadily declined to do, namely, to allow their envoys to prostrate themselves before barbarian potentates or kings, as was the custom in many countries. This was perhaps the most prominent outward sign of Roman contempt of the barbarians, of their striking superiority over their neighbors. And yet, notwithstanding that superiority of law and culture, Rome was distinctly influenced by her dealings with the outside world. The Roman *jus gentium* acquired in this way important general human elements, becoming more flexible and of wider scope than the rigid civil law. This

phenomenon shows what an important rôle international law and relations can play in the life of highly civilized nations.

IV. THE MIDDLE AGES

It was in the atmosphere of strong Roman cultural influences, but with an entirely different practical spirit, that the institutions of international law developed in the Middle Ages, gradually shaping themselves into a new system.

Historians usually divide the Middle Ages into two periods—the first one from the fifth to the tenth centuries, called sometimes the Dark Ages, and the second one from the eleventh to the sixteenth centuries.

It was during the first period that the new teachings of the Catholic Church began to assert themselves, under the leadership of a powerful personality. Nobody had in this respect a greater influence than Pope Gregory I, Hildebrand. His theory, known as the "Theory of the Two Sovereignties," likened human life to the physical existence of the body. Just as in human life there existed the two elements, the soul and the body, so in the life of a people there was the spiritual element, which had to be directed and dominated by the church, and the temporal matters, controlled by the state. The church was personified by the Pope, the state by the Emperor, standing parallel to one another. This theory sometimes is also called the theory of the "Two Glaves," both of them sovereign in their own domain.

However, such an equality of two powers could not exist for any length of time. There was in the situation too great a temptation to one of getting the upper-hand over its neighbor. Sooner or later one of the two had to become the superior power and the other to succumb. That was only a natural consequence. Having established their influence equal to the state, the leaders of the church aspired to achieve a superiority over the state. The policy of the church under the leadership of several strong personalities began thus to assert itself.

The first consequence of this policy was the claim of the Popes to the right to depose the Emperors, if they found it necessary in the interests of the church. Soon followed a second and equally important claim, the right to absolve the subjects of their oath of allegiance to the Emperor, in case the latter was in opposition to the church. This was a powerful weapon against the state, and soon brought forth a decided supremacy of the Popes over the Emperors. The outward sanction of this power was found in the ceremony of consecration of the Emperor, when he received in a most solemn way the religious blessings from the Pope.

Out of this dual power, divided between church and state, there was bound to arise a dangerous friction. The first conflicts originated in the matter of investiture of bishops. The Popes naturally claimed the right of appointing the bishops. The Emperors protested and resisted appointments of persons they did not like, considering such appointments to be an

interference in their own affairs. The most famous case of this sort was that of Henry IV. His failure to have things go his way is a good example of the great influence of the church in this matter. As is well known, Henry had to give in and beg pardon personally, standing barelegged in the snow in front of the Pope's palace at Canossa (1076). Energetic Popes, with strong personalities, employed many other means to curb the will of kings and emperors, gradually subduing all possible resistance on the part of the temporal power to the will of the church. Such was for instance the meaning of some of the crusades organized by the Popes. Toward the end of that period, the supremacy of the Popes became unquestionable.

But, of course, such constant strife between state and church was bound to create a strong feeling of dissatisfaction among educated and progressive elements of the population. Many enlightened citizens were, in consequence, trying to find a way out of the trouble by finding at least a theoretical or philosophic solution of the problem. This in turn led to a conflict of ideas, which was a seemingly insoluble antinomy or contradiction. On the one hand, there were numerous and powerful processes of differentiation of church, state, and within the state the growing feudal system. It seemed at times that the political disruption within the state had no limit. But, on the other hand, there was an element that proved to be strong enough to hold together the weakening temporal power and weld European nations into larger units. This was the influence of the great civilizing ideals, "*des idées civilisatrices*," as the French call them: Christianity, intellectual renaissance, common civilization and international law.

Many facts, already mentioned, called forth processes of differentiation; but others, likewise important, succeeded in keeping up the bonds of unity. Among the first ones, feudalism, with its endless wars and quarrels, led to an enormous increase in the number of states. Besides, the dominance of principles of private law called for constant changes; states were acquired and lost by purchase, marriage, inheritance, gifts or negotiations, changing hands as any piece of land and leading to wars, rivalries, jealousies, etc. But just here do we find the growth of opposite ideas, which forcibly led to agreements among the states and there soon appeared a great number of alliances and other international and inter-state combinations. This in turn produced the necessity of certain rules and usages which soon crystallized into a regular system of international law. A splendid example in point might be found in the history of the institution called "*Treuga Dei*," the Peace of God, proclaimed and often enforced by the Popes. As to systematized international law, we also have several instances of real codification that would make a good example for modern times. Such were the different medieval codes of maritime law, the Tables of Amalfi, the *Consolato del Mare*, the Venetian Code of 1255, the Laws of Visby.

All this led to an interesting result: the gradual establishment of permanent ambassadorial missions among the European states. The initiative in

this matter is often attributed to the clever but ruthless Louis XI. It is said of him that, hating wars and realizing the dangers and risks of such militant enterprises, he preferred to play the political game, using in general more peaceful means and in particular diplomacy.⁷ Henry VII of England, and Ferdinand and Isabella of Spain, did exactly the same thing. Besides personal predilections and cleverness, there were other factors, too, calling for the same results and increasing, if not creating, the rôle of ambassadorial missions, transforming them gradually into a permanent institution. Among these factors, the needs of inter-state commerce were always the strongest; and this is why the mentioned missions developed so rapidly in northern Italy among the many wealthy trading cities, like Venice, Florence, Ravenna, etc.

Unfortunately, the methods used in those days were far from attractive. Moral principles or ideals did not seem to play any rôle whatever. We have a dreadful picture of this in the writings of Machiavelli, who firmly believed in the depravity of human nature and constructed his code of advice to diplomatic agents accordingly. He thought that the fundamental principles of diplomacy were force and duplicity. One must not forget either that he had an enormous influence on his contemporaries; many of them took his advice as the gospel truth; diplomats carefully studied his writings and tried to follow his teachings.

We can best appreciate this deplorable state of affairs if we compare Machiavelli with Grotius. How much higher and nobler the guiding principles of the latter seem in comparison with the views expounded in *Il Principe* and other books of Machiavelli. Money and bankers played also a very important rôle in this diplomacy. The activities of Fugger, the most prominent among such bankers, are too well known to need special analysis. Money was lent to princes and for the purchase of their services and of their servility.

We have a brilliant example of "diplomatic laws" of those days in the well-known Venetian Code. The enormous trade of Venice called for a permanent organization of a regular diplomatic service, and this in turn necessitated legal regulations. Hence there grew up a whole system of law, very peculiar in its details. For instance, the Venetian ambassadors were not allowed to take abroad their wives, for fear the latter would not be able to keep diplomatic secrets. They were carefully instructed to do all their work in the greatest secrecy possible; they could not receive any leaves of absence while on their missions, and consequently the latter were usually of very short duration, lasting three or four months only; later on this was extended to two years. The envoys were obliged to do their own cooking in order to avoid being poisoned; they were not allowed to accept any presents, nor could they own any property in the country to which they

⁷ Louis is said to have had more than seventy diplomatic agents all over Western Europe, and very numerous secret agents and spies also working for his diplomatic purposes.

were sent; they had to report periodically to their government concerning their work and transactions, and were punished for conversing with other diplomats. These Venetian decrees were soon copied by other Italian city-governments.

Thus, gradually and imperceptibly there grew up in the Middle Ages an entirely new system of permanent diplomatic missions. From casual and temporary embassies *ad hoc*, sent to negotiate a certain treaty or discuss a single question, these missions became permanent channels of communication. This meant certainly a very great step forward.

At the same time and under the influence of Louis XI, the French language began gradually to replace the Latin of former days, becoming thus the new means of diplomatic intercourse. With these two new institutions firmly established, we enter into a new epoch, the history of modern Europe.

V. CONCLUSION

The most important conclusion that we can draw from the above narrative is the apparently great age of international law. From the described facts we can infer that international law is as old as human civilization in general, and that it is really a necessary and unavoidable consequence of any civilization. Modern historical research goes far into the ages without having yet discovered the primeval start of human culture; the latter seems to recede constantly further back and with it the beginnings of international obligations. Further, a very interesting point to remember is the fact that all through the ages, international law keeps steadily its basic characteristics, notwithstanding the great changes that take place all over the world. This seems to be another strong proof that international law is an inherent corollary of civilization and invariably comes with any cultural development. It lifts the international institutions above questions of race, nationality or religion, showing and proving unmistakably their all-human qualities. They grow up gradually from custom and usage, similar to any other rule of law, but with this difference, that usually the rule of law develops *inside* the body politic, while international law grows up *outside* the state, binding the latter nevertheless in exactly the same way as an individual is bound by the rule of law in the state.

From ancient times too the system of international law, equally as at present, covers two fields, the time of peace, when it chiefly develops under the influence of commercial relations, and the time of war, when by custom it grows up among belligerents. In both cases the essence of the system is identical, namely, the *mutual recognition of obligations* and the reciprocal observance of certain customs or usages. The antiquity of these institutions in either field cannot now be questioned. As a matter of fact, some of the more ancient civilizations have had better developed ideas of international intercourse than the civilizations of later periods!

The fundamental principle of international relations has been constantly

and everywhere the same, consisting in the *mutual recognition of the sanctity of international obligations and contracts*. It never made any difference whether such obligations were considered as binding the impersonal state or its chief representative, the king and ruler. In ancient times these two ideas, of state and ruler, were usually identical; and, just as today, the most difficult question seems to have been the one of sanctions. It was not easy at any time to bind the powerful states or conquering monarchs and make them keep their international contracts. Still, antiquity possessed perhaps better guarantees than more recent epochs in the great strength of religious obligations and in the fear of the wrath of gods, which was much more real than in later days.

The second no less important historical principle of international law was the recognition of the necessity of having regularly established *channels of intercourse*, through which the different international obligations and agreements had to be contracted and established. These channels and means of communication are also of the greatest antiquity; they are found at all times and among all civilizations. In creating these channels, usually called embassies, the states or rulers were bound first of all to recognize them on the principle of reciprocity; secondly, they were forced to respect them, establishing mutual guarantees for the safe conduct of international relations, which invariably grew into systems of mutually recognized immunities and privileges (like the idea of the personal immunity of envoys or ambassadors).

Finally, out of such a mutual recognition of international obligations there grew up unavoidably a third important principle, the idea of a certain equality among the transacting and contracting states or rulers. And, though at times, as in the case of Rome, there seem to have existed exceptions to this general rule, they do not disprove the theory and can be easily explained from the historical point of view by the tremendous advance in culture that the Roman state took in comparison with the surrounding world. Such epochs as the Roman were certainly exceptions. In normal times international relations developed among relatively equally civilized peoples, and thus always bore the unquestionable stamp of cultural and legal equality. It is only in the nineteenth century that this fundamental principle somehow gets lost under the influence of the diametrically opposed idea of the hegemony of the great Powers.

THE CODIFICATION OF INTERNATIONAL LAW*

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There are certain preliminary observations which should be made before we can take up the question of codifying international law or the method of codification, for without a correct understanding of certain matters, which may be considered fundamental, we may not know whether we are to deal with a system of law or a system of philosophy. As a matter of fact we are dealing with both, for law develops unconsciously or consciously in accordance with the principles of philosophy. If the law of nations is to be considered law in the strict sense of the word, we must deal with it as a system of law. If, on the other hand, it is a system of philosophy rather than of law, we must deal with it as philosophy, and the point of approach and the method of treatment will be different. But, above and beyond law, we are dealing with justice, and with those principles of justice, which, expressed in rules of law, we call the law of nations. Justice is the source; the principles of justice applicable to the conduct of nations constitute the law of nations, and the rules of law based upon these principles change with conditions, or to meet new conditions, and form the body and substance of international law at any given period.

Although our conceptions of justice may seem to change with time, place and circumstance, it can nevertheless be said that among the peoples and in the states of European civilization there is agreement as to justice and its principles, and that in the last few centuries there has been a general agreement upon those principles of justice, which, expressed in rules of law, form a safe and sure guide for nations in their mutual intercourse.

There are many definitions of international law, due to the preoccupation of the authors or the point of view from which the subject is approached, but however they may differ in form they are yet one in substance, as it is evident that in all of them we are dealing with a system of law. An eminent English lawyer, who had had experience in the conduct of international cases, asked in an address before the American Bar Association, in its session of 1896 at Saratoga: "What, then, is international law?" and he answered his own question in this way: "I know no better definition of it than that it is the sum of the rules or usages which civilized states have agreed shall be binding upon them in their dealings with one another." Lord Russell, of Killowen, for it is of him we speak, was at that time Lord Chief Justice of England, and he naturally looked upon international law as a part of the law of England, for had not one of his most distinguished predecessors in his

* English version of an address delivered in Spanish at the University of Habana, Feb. 8, 1924.

high office said a century and a half earlier that the law of nations was "part of the common law of England."

According to Lord Russell, international law was a series of rules or usages. Perhaps it would have been better to say, "usages of civilized states which had hardened into rules through repeated practice." Indeed, international law was expressly stated to be the law of Christian states, or the law of European states, which at one time amounted to much the same thing. But with the discovery of America and the establishment of the American republics, if the word "European" was to be used, it could only be in the sense that the states accepting it were of European origin or European civilization. At that time they were still Christian states, but with the awakening of the East, with the advent of China and Japan, it could no longer be said with propriety that the law of nations was the law of Christian states or of states of European origin. Hence in our day we have discarded limitations of origin, whether of religion or of geography, and international law is the law of civilized states.

It is to be observed that in the definition of Lord Russell these civilized states have agreed that the rules and usages which he mentions, but does not define, should be binding upon them. This is properly so, because there is no superior among nations to impose a law as there is a superior power within a state. It may be a question whether even within a state law is imposed, but between states it cannot rightfully be imposed by any state or by any group of states. It is agreed to by the civilized states because, in the course of their experience, it has been found to be necessary to have their conduct determined and controlled by certain usages which by acceptance have become rules, the sum total of which, to use Lord Chief Justice Russell's words, "form the body and the content of the law between nations."

This was the definition of a Chief Justice, not in the performance of his judicial duties, but speaking as a lawyer to his brethren of the American Bar. Some ten years later, another English lawyer, acting as Chief Justice of the Supreme Court of Hongkong, had occasion to consider international law in the decision of a case in his court and tried before him. In the arguments of counsel it had been insisted that the so-called "Law of Nations" was not law in the strict sense of the word,—that it was apparently not binding upon the court because of its lack of certain elements thought to be essential to law. It is better, however, to let Sir Henry Berkeley, the Chief Justice, state the objections and to reply to them in his own language. "It was contended," he said, "on behalf of the owners of the *Prometheus* that the term 'law,' as applied to this recognized system of principles and rules known as international law, is an inexact expression, that there is, in other words, no such thing as international law; that there can be no such law binding upon all nations, inasmuch as there is no sanction for such law, that is to say, there is no means by which obedience to such law can be imposed upon any given nation refusing obedience thereto." This is a fair statement

of the views of those who consider law as something imposed by a superior force—by physical power. The Chief Justice, however, did not share their views, and he gave the reasons: "I do not concur in that contention. In my opinion a law may be established and become international, that is to say binding upon all nations, by the agreement of such nations to be bound thereby, although it may be impossible to enforce obedience thereto by any given nation, party to the agreement."

Fortunately for us the Chief Justice did not leave the matter there; he felt that his statement required explanation and illustration. The objections went to the essence of law, and the answer which he gave therefore applies to all law, national or international:

The resistance of a nation to a law to which it has agreed does not derogate from the authority of the law because that resistance cannot, perhaps, be overcome. Such resistance merely makes the resisting nation a breaker of the law to which it has given its adherence, but it leaves the law, to the establishment of which the resisting nation was a party, still subsisting. Could it be successfully contended that because any given person or body of persons possessed for the time being power to resist an established municipal law such law had no existence? The answer to such a contention would be that the law still existed, though it might not for the time being be possible to enforce obedience to it.¹

Let us turn from the lawyer addressing his brethren, and from the judge deciding a case, to the publicist, and among the many, I beg to refer you to the late William Edward Hall, whose treatise on international law is likely to be the great classic of the English-speaking peoples. He was of the generation of Lord Russell and of Sir George Berkeley, and a few years before them he had had occasion to consider the binding force of international law, the question of its observance and of its violation. In the preface to the third edition of his treatise, which appeared in 1889, he considered these questions and he spoke as a prophet as well as a publicist. He contemplated the circumstances in which the rules of international law would be tried, tested and violated, but he was sure of the ultimate result. He said:

Probably in the next great war the questions which have accumulated during the last half century and more, will all be given their answers at once. Some hates moreover will crave for satisfaction; much envy and greed will be at work; but above all, and at the bottom of all, there will be the hard sense of necessity. Whole nations will be in the field; the commerce of the world may be on the sea to win or lose; national existences will be at stake; men will be tempted to do anything that will shorten hostilities and tend to a decisive issue. Conduct in the next great war will certainly be hard; it is very doubtful if it will be scrupulous, whether on the part of belligerents or neutrals; and most likely the next war will be great. But there can be very little doubt that if the

¹ In re Arbitration between Osaka Shosen Kaisha and Owners of Steamship *Prometheus*, Supreme Court of Hongkong, 1906, 2 Hongkong Law Reports, 207.

next war is unscrupulously waged, it also will be followed by a reaction towards increased stringency of law.²

These predictions made on August 1, 1889, were verified to the letter by the war which broke out on August 1, 1914. There is every reason to believe that time will approve his conclusions for his psychology is as sound as his facts were correct. In any event, his views are consoling and they seem to be in process of realization. It is Mr. Hall speaking:

In a community, as in an individual, passionate excess is followed by a reaction of lassitude and to some extent of conscience. On the whole the collective seems to exert itself in this way more surely than the individual conscience; and in things within the scope of international law, conscience, if it works less impulsively, can at least work more freely than in home affairs. Continuing temptation ceases with the war. At any rate it is a matter of experience that times, in which international law has been seriously disregarded, have been followed by periods in which the European conscience has done penance by putting itself under straiter obligations than those which it before acknowledged. There is no reason to suppose that things will be otherwise in the future. I therefore look forward with much misgiving to the manner in which the next great war will be waged, but with no misgiving at all as to the character of the rules which will be acknowledged ten years after its termination, by comparison with the rules now considered to exist.³

Five years have already passed. We still have five years within which to consider the principles of justice which, expressed in rules of law, shall control the conduct of nations as they do the minds and the actions of men. It is high time to proceed to the examination of these principles and to their statement in the form of a code. We are indeed dealing with law,—a law which restrains even sovereign nations, in the exercise of their sovereignty.

Admitting, however, that the rules or usages of civilized nations should be codified, a question arises, hardly less important than the rules and usages themselves. The question should not arise and yet it has. If Lord Russell's statement is correct that rules and usages are only binding because they have been agreed to by the civilized states, it necessarily follows that only a state is bound which agrees to the rules and usages—if it makes up its mind, so to speak, for itself. For it is only its own consent, not the consent of any other nation which may be called to act in its behalf, nor is it a group of states, however powerful and civilized they may be, which makes the law which only derives its force from the consent of all. We are dealing with law. We are not dealing with force. Law binds all. Force merely controls the weak. In the world of affairs where power, not justice, prevails, it is correct enough to say that "*la force prime le droit*." In a community in which law is to prevail we should, indeed we must, reverse the order and say "*le droit prime la force*." Nations are equal in law and before

² Hall, *International Law*, 3d ed., preface.

³ *Ibid.*

law, and in the codification of international law they must meet and act upon a footing of equality.

Equality is a truism, and yet truisms are often the hardest things to prove. Fortunately this is not the case in the present instance. In the case of *Le Louis*,⁴ decided by the High Court of Admiralty, as long ago as 1817, Sir William Scott, the greatest of English judges ever called upon to consider the right of visit and search upon the ocean in time of peace, observes "that two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to serve inviolate." It is to be remembered that the British Empire is here speaking through its highest authority on the law of nations and that the subject involved is none other than the control of the seas, a domain of which then and now Great Britain is the undisputed mistress if mere force rather than legal right be considered. The statement is, however, not a concession; it is a necessary consequence of another fundamental principle which Sir William Scott proceeds to recognize and in doing so makes law between nations possible and international peace an ultimate certainty rather than a pleasing promise. "The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all states meet upon a footing of entire equality and independence, no one state, or any one of its subjects, has a right to assume or exercise authority over the subjects of another."

This is the view of the English-speaking peoples of the Old World. It is, happily, the view of the English-speaking peoples of the New World.

A few years later, the greatest of North American judges had occasion to consider a different aspect of the same question in the case of *The Antelope*, decided in 1825.⁵ In delivering the unanimous opinion of the Supreme Court of the United States, Chief Justice Marshall used language which, while reaffirming that of his English colleague, if the expression may be permitted, is even more definite and in point for present purposes. He said:

No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all, by the consent of all, can be divested only by consent; and this trade [he was speaking of the slave trade as was Sir William Scott before him], in which all have par-

⁴ 2 Dodson, 210.

⁵ 10 Wheaton 66.

ticipated, must remain lawful to those who cannot be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose governments have not forbidden it.

This is sound doctrine. It is also old doctrine, but it is ever new, and cannot be too often repeated. To make progress we must constantly recur to first principles.

A North American statesman, a former member of the Supreme Court of the United States, and at present Secretary of State, is evidently of this opinion, as he has recently quoted with approval this statement of Chief Justice Marshall, confirming it in all respects and in express terms, and applying it to every one of the twenty-one republics of the American continent. In an address on the Centenary of the Monroe Doctrine, delivered appropriately in Philadelphia, the City of Brotherly Love, on the 30th day of November, 1923, Secretary Hughes, continued, after quoting with approval the language of Chief Justice Marshall to which reference has been made:

equality of the American Republics, their
Chief Justice Marshall:

Mr. Hughes was not content to give his approval in general to these principles of law. Claiming them in behalf of the United States he thus applied them to every American nation:

It cannot be doubted that this declaration embodies the fundamental principles of the policy of the United States in relation to the republics of Latin America. When we recognized these republics as members of the family of nations we recognized their rights and obligations as repeatedly defined by our statesmen and jurists and by our highest court.

It is evident, therefore, that the American republics must cooperate on a footing of equality in the codification of the rules and usages which are not only a law to them but to every civilized state of the world, and nothing could be more appropriate in a code of international law for the American states than this declaration of the rights and duties of nations. It is in the nature of a bill of rights. It might well be the preamble to the code, and I am happy to state that no less a person than Secretary Hughes shares this opinion.

We do not need to discuss the question whether international law is to be codified. The republics of America have on many occasions

law be law, it is possible, however difficult it may be, to arrange its principles in the form of a code, for if the principles of national law can be codified, and such is the practice of the American republics, the principles of public law may likewise be codified. Every textbook of international law is an analysis of the principles of the science. And it is not too much to say that the table of contents of any treatise on international law is an outline of a code; that the headings of the chapters are the articles of a code, and the sections, the subdivisions of these articles. Every résumé is a digest; every lecture in the classroom a lesson in codification. This is codification and none the less real and effective because it is unconscious.

A few days ago I was privileged to attend the international law class of my illustrious friend and the master of all American students of the law of nations. On this occasion one of the students discussed the cessation of neutrality consequent upon the cessation of war. He was followed by two members of the class who criticized his paper, and one who volunteered his opinion. Dr. Bustamante closed the discussion. He called attention to the Convention of the Hague Peace Conference of 1907 requiring war to be formally declared so that neutrals should have official knowledge of the existence of the war. He stated that, war being thus a legal state of affairs, it required of neutrals the performance of their duties during its continuance, that the duties cease with the war, and that the cessation of the war should be officially proclaimed by the belligerents as its declaration had been. This established the general principle and he instanced four special situations. The war ends by the independence of a province or portion of a state in war with the mother country; the absorption of one of the belligerents; the armistice providing for the discontinuance of hostile relations and the consequent cessation of neutral duties, and finally the ending of war by a cessation of hostilities without treaty or formal action by the belligerents.

But the matter does not rest here. Hardy, adventurous souls have entered, as it were, into the land of promise, and have returned laden with its fruits. It appears that in point of time the first attempt was made to codify international law by Esteban de Ferrater, who published at Barcelona, in 1846 and 1847, a work entitled *Código de derecho internacional*, "a two-volumed methodical collection of Spanish treaties with a short survey of public international law, and the conflict of laws. This survey, under the title of *Règles de droit international*, is composed of 414 articles and," according to Rivier, it is "a veritable code," making of Ferrater the precursor of his many successors whose names will one day be legion. During the Civil War in the United States, Francis Lieber, then a Professor at Columbia College, now Columbia University, prepared, at the request of President Lincoln, a code of land warfare for the federal armies. It is a small work of extraordinary value. With the industry of the German, for he was a German by birth, and with the spirit of the new world, for he was a naturalized citizen of the United States, he put into the form of articles the customs and

usages of warfare on land so adequately and so skilfully that but a single instance arose in the Franco-Prussian War of a few years later, which was not covered by his rules and regulations.

The European publicist, Johann Caspar Bluntschli, a Swiss by birth and with the liberal conceptions of his country, a German by residence and armed with the method of the German, published in 1868 a statement of international law in the form of a code. He was inspired to do so by the success of Lieber's labors. Indeed he had first translated Lieber's code of land warfare into German, and, impressed by its possibilities, he extended codification to the law of peace as well as war on sea and on land. Originally in German, the work has been admirably translated into French, and thus has made the tour of the world.

At approximately the same time a North American publicist of great experience published in 1872 and in 1876 a code of international law covering the entire field. This is an admirable piece of work for which Mr. Field was specially qualified. He had had great experience in the codification of the laws of the State of New York, and it is due to his influence that the laws of many of the States of the American Union have been given the form and precision of codes, and indeed have been codified. Field's outline of a code was translated into French and it has thus been placed at the disposal of scholars in all parts of the world.

The possibility of codification by individual initiative has therefore been before the world for half a century or more, but the matter does not rest here. The Institute of International Law, composed of publicists from different countries, was formed in Ghent, and last year celebrated its fiftieth anniversary. It has discussed many and intricate questions of international law. Its resolutions on the various subjects considered by it are in the form of articles and arranged in a systematic order; they would themselves form many articles of a code. With the formation of the Institute of International Law, codification became collective as well as individual, but again the matter does not rest here. Due in large part to the labors of the Institute, two great conferences have been able to reach agreements in the form of treaties and conventions upon a variety of important subjects. The first of these bodies met in 1899, and is popularly known as the First Peace Conference. Representatives of twenty-six states met at The Hague in the summer of that year and were able to reduce to the form of a code the laws and customs of land warfare, and to endow the nations with a convention for the peaceful settlement of their international disputes. The Second Hague Peace Conference met in 1907. Representatives of forty-four states were present and took part in the discussions, and when it adjourned after four months of intensive labor it had many conventions to its credit, in fact and in form, chapters in a code of international law for the nations.

The genius and foresight of one man, if Lieber is to be considered as the pioneer, had shown the possibility of codification. The creation of the

Institute of International Law, largely due to his efforts, created a scientific organ for the codification of sections of international law and supplied to the conferences of the nations the materials which they have codified in the forms of treaties and conventions. The history of the Old World seems likely to repeat itself in the New. Instead of a single publicist, there are many advocating the codification of international law. The American Institute of International Law has been called into being, and drafted at its first session in 1916 a declaration of the rights and duties of nations which seems destined to stand at the head and front of the code of the American republics. And this Institute is in a position to supply the materials to the conferences of the American republics for the codification of those principles, which should control the conduct of the American republics.

The sixth conference of the American nations is to meet in the city of Havana, and it is expected that the Commission of Jurists meeting in advance at Rio de Janeiro will be in a position to enable this conference to put in the form of codes for the Americas large portions of public and private international law. The European Institute has by force of circumstances been, as it were, a preparatory committee for the labors of the Hague Conferences. If this Institute has been the agent, it has been the unconscious agent. In the Western World, the American Institute of International Law can be the agent of the American conferences, and it is to be not the unconscious but the conscious agent, inasmuch as on the second day of January, 1924, the Governing Board of the twenty-one American republics, met in the city of Washington, requested the American Institute to hold a session during the present year and to lay the result of its labors before the Commission of Jurists in Rio de Janeiro to meet in the coming year. The importance of the subject, the unusual character of the request and the results to be expected from its cooperation justify the text of the resolution and a statement of the sources from which the notification came.

The Secretary of State of the United States is the Chairman of the Governing Board of the Pan-American Union, composed of a diplomatic representative in Washington of each of the American republics. At a meeting of the Union, on the 2nd of January, Secretary Hughes, as Chairman, laid before the Board the following resolution:

Whereas, The Fifth International Conference of American States adopted a vote of thanks for the results achieved by the American Institute of International Law; and,

Whereas, One of the purposes for which the American Institute of International Law has been established is to secure a more definite formulation of the rules of international law; and,

Whereas, The codification of the rules of international law is the most important task entrusted to the International Commission of Jurists, and,

Whereas, The labors of the American Institute of International Law will be of great service to the International Commission of Jurists in the fulfillment of the task assigned to it.

BE IT RESOLVED:

By the Governing Board of the Pan American Union to submit to the Executive Committee of the American Institute of International Law the desirability of holding a session of the Institute in 1924 in order that the results of the deliberations of the Institute may be submitted to the International Commission of Jurists at its meeting at Rio de Janeiro in 1925.

The resolution was unanimously adopted. It was transmitted by the Chairman of the Board to the President of the American Institute, with the hope "that the suggestions submitted by the Governing Board of the Pan American Union may have the approval of the Executive Committee of the American Institute of International Law."

The President of the Institute, in behalf of its members, accepted the invitation in the following terms: "I have the honor to inform you that the meeting of the Council of Direction of the American Institute will be held in Habana, in the closing days of the present month, in order to make arrangements for the forthcoming meetings of the Institute."

It is to be observed that the initiative in the matter was taken by Secretary Hughes, thereby showing the great interest of the Government of the United States in the codification of international law and the appreciation of the services which the American Institute may be expected to render in its behalf.

The statesmen of the Republic of the North are regarded as practical to a fault. It is to be hoped in this case that Secretary Hughes is practical without being at fault. The Executive Committee of the American Institute of International Law has already considered and has made much progress as to the time, place and program of the meeting of its members to be held in the course of the present year, in order that the result of their labors in behalf of codification may be laid before the Commission of Jurists at their meeting in Rio de Janeiro in 1925, for such consideration as that distinguished and representative body may care to accord it.

What are the sources of the international law which is to be codified? While it is the intention to codify both public and private international law, I shall confine myself to a consideration of public as distinct from private international law, for however difficult the second may be, the first is infinitely more difficult, and as pressing as it is difficult. Fortunately, we do not need to resort to speculation, or to weigh the individual opinions of publicists of distinction. The nations of the world have expressed their opinion in no uncertain terms as to the sources of authority in international law and the order in which the authority is to be applied.

Five of the ten years within the period allotted by Mr. Hall have expired. At the Second Hague Peace Conference held in 1907, a draft convention was adopted for the establishment of a Permanent Court of International Justice. Owing to the shortness of the time and the difficulty of the subject,

a method acceptable to a majority of the states was not found for the appointment of the judges. Steps were in progress to have this court appointed, and at one time it seemed likely that it would have been established in the year 1914. The war came instead.

In the treaty of peace signed at Versailles on June 28, 1919, to end the war with Germany, there is a section devoted to the organization of a League of Nations, and in its fourteenth article it is provided that the Council of the League was to prepare a plan for a Permanent Court of International Justice. The Council wisely turned over the task to a body of representative publicists. They were ten in number, five selected from the so-called Principal Allied and Associated Powers, and five from the other Powers. They met at The Hague in the summer of 1920 and prepared a draft for a Court of International Justice which, with modifications, was adopted in the course of the same year by the members of the states adhering to the League of Nations. A method of appointing the judges of this court had been devised and among the judges of the court appointed in the following year were, to our great satisfaction, the late Ruy Barbosa, of Brazil, the distinguished publicist of Cuba, Dr. Antonio Sánchez de Bustamante, and Mr. John Bassett Moore, of the United States. The Advisory Committee of Jurists felt that it was impossible to expect the Principal Allied and Associated Powers to allow themselves to be summoned before the court unless there was an agreement upon the rules of law to be applied, and the order in which they were to be applied by the judges of the court.

We must, however, in the matter of justice and its application to the conduct of nations, not overlook the fact that the larger nations have two methods of settling their disputes, whereas the smaller nations have but one, and that the larger nations are unwilling to renounce what is called "the ultima ratio of princes" without being assured in advance that the other agency could be safely relied upon. The two agencies of the great Powers are law and the sword, which too often in the past has imposed, if it has not made, the law it enforces. The smaller Powers have only law for their shield and their buckler. They are, indeed, willing to renounce the sword, which they cannot wield, whereas the large nations wielding it are willing to renounce it only if assured in advance that the rules of law to be applied are a satisfactory if not a better method to secure their interests.

Therefore the Advisory Committee of Jurists proposed in its thirty-fifth article the law to be applied, the sources of the law, and the order in which they should be applied:

The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. International custom, as evidence of a general practice, which is accepted as law;
3. The general principles of law recognized by civilized nations.

4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.⁶

The Advisory Committee, however, felt that something more was needed and it therefore recommended:

I. That a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable for the following purposes:

1. To restate the established rules of international law, especially and in the first instance, in the fields affected by the events of the recent war.

2. To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

3. To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

4. To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

II. That the Institute of International Law, the American Institute of International Law, the Union Juridique Internationale, the International Law Association, and the Iberian Institute of Comparative Law be invited to prepare with such conference or collaboration *inter sese* as they may deem useful, projects for the work of the Conference to be submitted beforehand to the several Governments and laid before the Conference for its consideration and such action as it may find suitable.

III. That the Conference be named Conference for the Advancement of International Law.

IV. That this Conference be followed by further successive conferences at stated intervals to continue the work left unfinished.⁷

The Advisory Committee thought that, with the statement of the law, the order in which it should be applied, and with an agency for the development of this law to meet the objections of the larger nations, they could consent to be summoned before the court in a number of cases arising out of: the interpretation of a treaty; any question of international law; the existence of any fact, which, if established, would constitute a breach of an international obligation; the nature or extent of reparation to be made for the breach of an international obligation; and the interpretation of a sentence passed by the court.

It is important to observe that within this limited jurisdiction, admittedly extensive, a state would be able to sue a state in the international court as an individual sues an individual in a national court. It was the hope of the Advisory Committee that this would be but the beginning, and that the

⁶ *Proceedings of the American Society of International Law*, 1920, pp. 64-5.

⁷ *Ibid.*, pp. 79-81.

international court should have jurisdiction "of all disputes" of any kind which the nations in controversy should submit to it, either by a general or a particular agreement of the parties. But, in the absence of a statement of the principles of law to be applied, the nations were unwilling to bind themselves to appear except by special consent.

The Assembly of the League of Nations rejected the meeting of conferences for the development of international law which involved its immediate and continuous codification, with the result that nation may not sue nation before the bar of the court, as individual sues individual, but that nations in controversy must, as in the case of arbitration, agree in advance upon the submission of their controversies.

Fortunately the matter does not rest here. The initiative has passed from the Old to the New World. The recent Conference of the American States at Santiago de Chile has taken up the codification of international law rejected by the Assembly at Geneva, and the American Institute of International Law, one of the scientific bodies mentioned in the recommendation of the Advisory Committee, likewise rejected at Geneva, has been invited by the Governing Board of the American republics in Washington to act, as it were, as a preparatory committee, of the American republics for the purpose of codification, a codification, it is to be hoped, replete with the learning of the Old and permeated by the spirit of the New World.

The American spirit is the spirit of peace. Everyone of the twenty-one American republics has sought to withhold itself from participation in the quarrels and disputes of the Old World. This is not a policy of isolation, but a recognition of a fundamental principle that a nation should not intervene in the affairs of a foreign nation, and that in case of war every nation has a right to remain neutral in accordance with its best interests, of which it is and must be the sole judge.

The result is that external peace has been in the Americas the rule rather than the exception and that wars have been occasional—a sporadic rather than a regular course of things. As codification is to be undertaken for a practical purpose, it is to be supposed that the rules and customs of civilized nations relating to peace will occupy the first place in the American scheme, although, of course, the usages and customs of warfare cannot be overlooked. Without attempting to predict a method that is to be followed by the Commission of Jurists, it is safe to presume that the generally recognized principles of international law will be stated in general terms. Special practices due to geographical, local and social conditions of the Americas will be set forth, although it is believed that their examination will show that they are not so much exceptions to the general rules and usages as special applications of a general principle, universally acknowledged.

In forming, therefore, a code for the Americas a long step will have been taken for a code of all the nations.

Let me recur to the subject of sources of authority and the order in which

they are to be applied. The four principles of the statute quoted of the Permanent Court of International Justice must serve as a guide to the American commission of codification. Some forty-four states in good standing in the family of nations are a party to this article, among them the British Empire with its self-governing dominions, and an overwhelming majority of the American republics. The Government of the United States has not adhered to the statute for the Permanent Court of International Justice. It is not, therefore, in express terms a party to this article, and yet it is in spirit, so that the article can be said to represent the views of the English-speaking world as well as the views of the nations at large, including, as has been stated, the large majority of the American republics. This appears from a very important decision of the Supreme Court in a comparatively recent case. Speaking in Habana, I do not need to recall that the United States was at war with Spain in 1898, and that as a result of this war the twentieth of the American republics took its rightful place in the group of American states. The case to which I desire to call your attention arose out of the capture of two small fishing-smacks, the *Paquete Habana* and the *Lola*, in Cuban waters.⁸ The captured vessels were brought into the port of Key West, libelled and condemned as enemy's property and sold under decree of the District Court. On appeal to the Supreme Court of the United States, the question before the court was, Are fishing-smacks, in the absence of municipal law or treaty, protected from capture by the law of nations, and is such law of nations part of the municipal law of the United States?

It is to be observed that the question of principle far transcends the value of the fishing-smacks involved. In 1900 the Supreme Court of the United States rendered its decision, in which it was stated in clear and precise terms that: "International law is part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." There was here no treaty covering the question. The Supreme Court of the United States, therefore, was required to consider whether fishing vessels engaged in what is called inshore fishing, were by the practice of nations exempt from capture. In other words, the court was obliged to determine the sources of the law of nations and the order in which they should be applied. "For this purpose," the Court went on to say, "where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat." The court, however, issued a word of warning: "Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law

⁸ 175 U. S. 677.

ought to be, but for trustworthy evidence of what the law really is." Here we have an authoritative statement of the sources and apparently the order in which the law of nations should be drawn upon. If there had been a treaty with Spain, its terms would have been applied without further consideration. In the absence of treaty, resort was to be had to the customs and usages of civilized nations, and as evidence of these to accredited treatises on international law.

Admitting that international law binds all civilized nations, the question is one of proof, as to what is to be considered at any particular time the law of nations. If there be a treaty, the nation is expressly bound, and the treaty proves itself. In the absence of treaty, we are thrown back upon the usages and customs of civilized states, the oldest, the most continuous, and, in reality, the chief source of the law. In the absence of an official statement of the usages and customs, they are proved every day in the year by the writings of men learned in the law of nations. But there are usages and customs, and even the doctors differ among themselves.

In the recent *Rand* case, from which Lord Chief Justice Russell's definition of international law has been quoted, the court had occasion to consider the nature and the value of the writings of the learned as evidence of international law, for Lord Robert Cecil, maintaining, and properly enough, in his argument, that international law was binding upon English courts of justice, had quoted passages from writers on international law to establish a rule which, if really binding, would inure to the benefit of his client. Lord Chief Justice Alverstone, speaking in behalf of the court felt constrained to say:

In regard to this class of authority it is important to remember certain necessary limitations to its value. There is an essential difference, as to certainty and definiteness, between municipal law and a system or body of rules in regard to international conduct, which, so far as it exists at all (and its existence is assumed by the phrase "international law"), rests upon a consensus of civilized states, not expressed in any code or pact, nor possessing, in case of dispute, any authorized or authoritative interpreter, and capable, indeed, of proof, in the absence of some express international agreement, only by evidence of usage to be obtained from the action of nations in similar cases in the course of their history. It is obvious that, in respect of many questions that may arise, there will be room for difference of opinion as to whether such a consensus could be shown to exist.⁹

Having laid down the general principle that the usage or custom not only makes, but is the law, his lordship passed to a consideration of what may be called the literary evidence. And on this part of the case he said:

The views expressed by learned writers on international law have done in the past, and will do in the future, valuable service in helping to create the opinion by which the range of the consensus of civilized nations

⁹ *West Rand Central Gold Mining Co., Limited, v. The King*, 1905, 2 K. B. 391.

is enlarged. But in many instances their pronouncements must be regarded rather as the embodiments of their views as to what ought to be, from an ethical standpoint, the conduct of nations *inter se*, than the enunciation of a rule or practice so universally approved or assented to as to be fairly termed, even in the qualified sense in which that word can be understood in reference to the relations between independent political communities, "law."¹⁰

The statement of Lord Alverstone cannot well be gainsaid, although it is perhaps permissible to say that in regarding the learned as makers in a certain sense of international law, he overlooks their value as witnesses to the law which they seek to expound and to develop. An illustrious predecessor, Lord Chief Justice Coleridge, had already treated the subject with great care in the *Franconia* case, decided in 1876, involving British jurisdiction three miles seaward beyond low-water mark. On this point, he said: "By a consensus of writers, without one single authority to the contrary, some portion of the coast-waters of a country is considered for some purposes to belong to the country the coast of which they wash." It is to be observed that his lordship was here speaking of writers, and, in view of this fact, his conclusion is of uncommon value. "This is," he said, "established as solidly as, by the very nature of the case, any proposition of international law can be." He admitted that the opinions of jurists did not bind the courts of his country, but he held them to be "evidence of the agreement of nations on international points." And he stated as a matter of course that on such points, English courts would give effect "as part of English law, to such agreement." The reason which he gives in support of his view carries conviction: "We find a number of men of education, of many different nations, most of them quite uninterested in maintaining any particular thesis as to the matter now in question, agreeing generally for nearly three centuries in the proposition that the territory of a maritime country extends beyond low-water mark." And few there are who will differ from his conclusion, that he could hardly "conceive stronger evidence to show that, as far as it depends on the agreement of nations, the territory of maritime countries does so extend." So impressed was his lordship by the consensus of opinion to be found among jurists, that he ventured to say he should not "hesitate to hold that civilized nations had agreed to this prolongation of the territory of maritime states, upon the authority of the writers who have been cited in this argument as laying down the affirmative of this proposition."¹¹

This bowing to opinion is an American doctrine. The statesmen of the American Revolution appealed in justification of their cause to "a decent respect to the opinions of mankind," and, in our own day, President Wilson renounced an American contention, out of respect to enlightened opinion of the nation, saying of the exemption of American ships from tolls while passing through the Panama Canal:

¹⁰ *Ibid.*

¹¹ *The Queen v. Keyn*, L. R. 2 Exch. Div., 63.

Whatever may be our own differences of opinion concerning this much debated measure, its meaning is not debated outside the United States. Everywhere else the language of the treaty is given but one interpretation, and that interpretation precludes the exemption I am asking you to repeal. . . . The large thing to do is the only thing that we can afford to do, a voluntary withdrawal from a position everywhere questioned and misunderstood. We ought to reverse our action without raising the question whether we were right or wrong, and so once more deserve our reputation for generosity and for the redemption of every obligation without quibble or hesitation.¹²

That Lord Coleridge's appreciation of the consensus of writers is not overdone, and that they are indeed witnesses to a fact, is shown by the measured language of Mr. Justice Gray in the very case of the *Paquete Habana* under consideration.

It will be observed that the court interposed between treaties and customs and usages "executive or legislative act or judicial decision" regarding which a word of explanation is required. It is true that an executive or legislative act or a judicial decision of the United States must be resorted to and that it would be binding upon a court of the United States. This does not and cannot mean that an executive or legislative act or judicial decision of the nation shall bind a foreign nation. It binds the appropriate authorities of the United States, but it only binds the United States. The foreign country is not bound in questions of international law, unless it has given its consent to the executive or legislative act or judicial decision. No one nation can make a law for another nation. No one nation can impose its law upon another nation. There is in reality no difficulty in the matter, because international law is the law of each and every nation, whereas the law of the particular nation is simply the law of that country. Persons taking oath to support the laws of their country must of necessity apply and enforce them, but national law only is a national obligation. International law is an international obligation. Therefore, it exists and can be enforced by the injured nation through diplomatic channels, although it may not be enforced through the courts of the particular country. The authority of the nation only extends to its authorities. It may command them to do or abstain from doing a particular act, but its command cannot affect the rights of nations arising under international law. The court may decide a case for a nation. Its decision cannot bind a foreign nation if it is contrary to the law of nations. In an early case Lord Chief Justice Mansfield held that the law of nations was a part of the common law of England, and that Parliament could not change the law of nations. Referring to the famous Act of Parliament of the seventh year of Queen Anne's reign, which provided punishment for a violation of the rights and privileges of foreign ministers under the law of nations, he stated that the Act of Parliament "did not in-

¹² Special address, March 5, 1914. Richardson, *Messages and Papers of the Presidents*, Vol. XVI, p. 7933.

tend to alter, nor can it alter the law of nations." This question has given rise to much comment, but it is true in all respects whatsoever, that an Act of Parliament has no extraterritorial jurisdiction so far as foreign nations are concerned. It may command all persons owing allegiance to Great Britain, but it cannot command those who do not owe allegiance. So far as British subjects are concerned, an Act of Parliament creates law within British jurisdiction. Beyond British jurisdiction, the Act of Parliament is simply null and void and of no effect whatever, as impotent as an Act of Congress in the United States which would attempt to visit and search foreign vessels beyond the three mile limit, without the consent of the nation to which those foreign vessels belong. By treaty this may be done, but not by Act of Congress without treaty agreement or consent.

There was a sixth article of the Declaration of Rights and Duties of Nations which Secretary Hughes did not quote in his approval of the declaration, as it was not material to his purpose. It is fundamental to ours. Its acceptance will tend to clear up doubt and misconceptions:

International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.¹³

This is merely a codification of existing practice. It is only a restatement of Lord Mansfield's opinion, and it is not inconsistent with the decision of the Supreme Court of the United States in the case of the *Paquete Habana*. The article would, however, render it too clear for argument that an executive or legislative act or judicial decision of any country merely has the force of law within its territory and that the rights of other nations, and therefore the duties of other nations, are unaffected by an executive or legislative act or judicial decision of any country, however powerful it may be, unless in accordance with the recognized law of nations.

In the statements which I have had the honor to make, I have dwelt upon general principles. I have not sought to enter into details, believing that if general principles are well understood, the details will take care of themselves, and that an agreement upon general principles will enable the American republics to draft a code for their guidance, which will be of service to all nations accepting the general principles, although there may be here and there an occasional special practice due to geographical situation or local or social conditions.

The Americans have special interests, but these special interests must be brought under general principles of law. All the nations of the Old World are wiser than any one nation. The twenty-one American republics are

¹³ *The American Institute of International Law. Its Declaration of the Rights and Duties of Nations* (Washington, 1916), p. 88.

wiser than any one of their members, and the opinion of the entire world is stronger and more persuasive than that of the strongest of nations. When the first American republic declared its independence, it was "with a decent respect to the opinions of mankind." When the twenty-one American republics, through their accredited representatives, achieve the codification of international law, they will, of necessity, "show a decent respect to the opinions of mankind."

Let me quote, in concluding this portion of the remarks which I have had the honor of making in this distinguished presence, the language of Joseph Story, a North American judge and author, equally distinguished in the domain of public and private international law:

Now the law of nations may be deduced, first, from the general principles of right and justice, applied to the concerns of individuals, and thence to the relations and duties of nations; or, secondly, in things indifferent or questionable, from the customary observances and recognitions of civilized nations; or, lastly from the conventional or positive law, that regulates the intercourse between states. What, therefore, the law of nations is, does not rest upon mere theory, but may be considered, as modified by practice, or ascertained by the treaties of nations at different periods. It does not follow, therefore, that because a principle cannot be found settled by the consent or practice of nations at one time, it is to be concluded, that at no subsequent period the principle can be considered as incorporated into the public code of nations. Nor is it to be admitted, that no principle belongs to the law of nations, which is not universally recognized, as such, by all civilized communities, or even by those constituting, what may be called, the Christian states of Europe.¹⁴

If the distinguished publicist had stopped here, his language would have applied to the past and to fields admittedly within the domain of present practice. He does not stop here. He brings within the possibility of law the future as well as the past:

But I think it may be unequivocally affirmed, that every doctrine, that may be fairly deduced by correct reasoning from the rights and duties of nations, and the nature of moral obligation, may theoretically be said to exist in the law of nations; and unless it be relaxed or waived by the consent of nations, which may be evidenced by their general practice and customs, it may be enforced by a court of justice, whenever it arises in judgment. And I may go farther and say, that no practice whatsoever can obliterate the fundamental distinction between right and wrong, and that every nation is at liberty to apply to another the correct principle, whenever both nations by their public acts recede from such practice, and admit the injustice or cruelty of it.¹⁵

It will not have escaped notice that I have drawn upon the theory and practice of the English-speaking countries, as it does not become me in the

¹⁴ *La Jeune Eugénie*, 2 Mason 409; Fed. Cas. No. 15551 (1822).

¹⁵ *Ibid.*

capital of Cuba, the last of the American states to separate itself from Spain, that Mother of Republics, to affect a familiarity with Latin American precedents. But codification is to be of general, not of special, practice, and we of the English-speaking world must remember that the law of nations is not of English origin. The English-speaking peoples have indeed contributed to its development, but it is to a system of rules and usages which they did not create. International law came into being on the continent of Europe where it had assumed definite form and shape before there was an English writer on the subject, while England reposed in insular isolation and before its slumbers were troubled with those dreams of empire of which we in our own day have seen well-nigh unbelievable realization.

On the eve of the American Revolution, Lord Mansfield could say of a famous case in which he was engaged as counsel some thirty years previously, that the Lord Chancellor deciding it "argued and determined from such instances, and the authority of Grotius, Barbeyrac, Bynkershoek, Wiquefort, etc.; there being no English writer of eminence upon the subject." It must, therefore, be admitted that a perfected system of international law existed before the thirteen English colonies of North America had declared their independence, and it is a fact that the statesmen of the Revolution accepted the law of nations as expounded in the immortal treatise of Vattel, an eminent publicist of French-speaking Switzerland, and whose authority today decides questions of right and wrong in the chancelleries of the world.

A code for the Americas must be conceived in the spirit of American liberty; it must be drafted upon a footing of legal equality, and it must manifest in all its provisions the sentiment of continental fraternity.

There is a universal law of reason, of justice and of conscience, of which the law of nations is naturally a part. Almost two thousand years ago Cicero felt justified in saying: "*Non erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et apud omnes gentes, et omni tempore, una eademque le obtinebit.*"

If Cicero were speaking today and if he were modestly to abstain from reference to Rome, he might say, "There is to be one law in London, in Paris and in Berlin" and, looking toward the sun which is rising, not setting, in the West, would he not add: "The same law in Rio de Janeiro, in Habana and in Washington."

That the American republics may in some measure contribute to the statement of this law and through their initiative lay it before the peoples of Europe in the form of a code is indeed an ambition worthy of the twenty-one free, sovereign and independent states of America.

THE OPIUM QUESTION

BY QUINCY WRIGHT
Of the Board of Editors

Congressman Porter's resolution of January 28, 1924,¹ authorizing an appropriation for American participation in two international conferences on the opium and narcotic drug traffic to be held in the latter part of this year is the most recent step in the long history of mankind's fight against his own desire for narcotics. This fight has progressed by three stages.

The first stage began with the edict prohibiting opium smoking by the Chinese Emperor Young Cheng in 1729.² In spite of this and subsequent edicts, opium smoking increased in China. Originally imported from India by the Portuguese, the monopoly of the trade was taken over by the British East India Company in 1773. Chinese cultivation of the poppy had begun in the seventeenth century, but the government's efforts at suppression seem to have been moderately successful at this time. Smuggling from India, however, continued until the drastic efforts at suppression in 1839 led to the first opium war with Great Britain. The treaty of Nanking which followed this war did not legalize the opium trade, and the United States by its first treaty with China made in 1844 agreed to prevent the abuse of its flag for smuggling (Art. 33).³ Nevertheless, illegitimate importation continued, and by the treaties of Tientsen made by China with Great Britain, France and the United States in 1858 the trade in opium was recognized and a tariff provided. The British and American negotiators both insisted that no pressure was brought upon China to this end.⁴ France and Great Britain fought the second opium war against China before the treaties were finally ratified. By the treaty of 1880 the United States and China mutually agreed to prevent opium trade by their citizens (Art. 2) and American legis-

¹ 68th Cong., 1st sess., H. J. Res., 162.

² See League of Nations, Advisory Committee on Traffic in Opium and other Dangerous Drugs (hereafter referred to as Opium Committee), 5th session, *Minutes*, p. 187. *Hearings before the Committee on Foreign Affairs, on Limiting Production of Habit-Forming Drugs and Raw Materials from which they are made*, 67th Congress, 4th Session, House of Representatives, 1923 (hereafter referred to as H. of R., *Hearings*), p. 124.

³ Articles concerning opium in treaties before 1909 are printed in the SUPPLEMENT to this JOURNAL, Vol. 3, pp. 253-269. Americans were extensively engaged in the opium trade before 1844 and the treaty was not effectively enforced. See Dennett, *Americans in Eastern Asia*, pp. 115-127, 163.

⁴ See letter of American Minister Reed and British Commissioners, Lay and Oliphant, SUPPLEMENT to this JOURNAL, Vol. 3, pp. 269-274. But see Dennett, *op. cit.*, p. 325.

lation of February 23, 1887, made this provision effective.⁵ Since that time the United States has consistently sought to aid China in her struggle against opium.

Domestic cultivation and foreign trade, however, increased rapidly after 1858 until it was estimated that twenty-seven per cent of the adult male population of China were opium smokers,⁶ and according to Yuan Shi Kai, in 1912, "China has been dying from this curse for more than half a century. Her people overcome by the vile drug have been half asleep and have not known that they and their country were dying."⁷ In these circumstances an imperial edict of 1906 ordered the entire abolition of opium cultivation and smoking within ten years from January 1, 1907.⁸ An agreement with Great Britain, effective from January 1, 1908, provided for reduction of Indian export for a three year experimental period provided China reduced cultivation and importation from Turkey, Persia and other opium-growing countries proportionately.⁹ In 1911 the British commissioner made so favorable a report on the results of Chinese efforts that Great Britain agreed to end importation from India by 1917. Though the revolution of 1911 brought a temporary set-back, general opinion seemed to be that by 1917 both cultivation and importation of opium in China had ended,¹⁰ with the exception of some smuggling mostly from Hong Kong and Macao.¹¹ The disorder in China since 1917 has resulted in a recrudescence of poppy growing¹² and in an increased smuggling of opium, morphine and cocaine, the last two of which had been introduced as "opium cures" during the period when smoking opium was difficult to obtain.¹³

⁵ See Moore's *Digest of International Law*, Vol. 2, p. 651; *League of Nations Official Journal*, Vol. 3, p. 1038. On negotiation of this treaty see Dennett, *op. cit.*, pp. 520, 543.

⁶ H. of R., *Hearings*, 1923, p. 125.

⁷ This JOURNAL, Vol. 7, p. 139. See also *ibid.*, Vol. 7, p. 872.

⁸ Opium Committee, 5th sess., *Minutes*, p. 187. For Chinese laws as revised in 1921 see H. of R., *Hearings*, 1923, pp. 134-136.

⁹ This JOURNAL, Vol. 3, pp. 835, 878; Vol. 7, p. 873; SUPPLEMENT to this JOURNAL, Vol. 3, p. 264 and statement of Lord Minto, Governor-General of India, 1910, quoted *ibid.*, Vol. 5, p. 471.

¹⁰ H. of R., *Hearings*, 1923, p. 125; Opium Committee, 5th sess., June, 1923, *Minutes*, p. 186; Statement of Chinese representative Koo, *League of Nations, Records of the First Assembly, Plenary Meetings*, 1920, p. 543; *Records of the Second Assembly*, 5th Committee, p. 347.

¹¹ See agreement between Great Britain and Portugal, 1913, SUPPLEMENT to this JOURNAL, Vol. 8, p. 163.

¹² See 6th resolution, Opium Committee, 2nd sess., April, 1922, *Report*, p. 12. The League Secretariat estimated the 1920 crop at 10 per cent of the 1905 crop (*ibid.*, 5th sess., *Minutes*, p. 192), but this was considered much too low by the committee (*ibid.*, p. 106). A British report in 1922 says: "The law which operates in restriction of opium production in the great majority of the poppy-growing provinces is the ordinary law of supply and demand, while in not a few of the provinces, there is an artificial stimulus to production in the form of compulsory planting under order from the military chiefs (Tuchuns) who derive a substantial revenue by taxing the ensuing crop" (*ibid.*, p. 172).

¹³ This JOURNAL, Vol. 6, pp. 870, 885; Statement of Chinese representative Koo, *League*

The second stage in the history of the fight against opium was inaugurated by the United States through President Roosevelt's call for an international commission, which met at Shanghai in 1909.¹⁴ The United States had encountered difficulties in controlling the opium situation in the Philippines,¹⁵ and the drug habit had shown signs of spreading in other countries, particularly in the United States.¹⁶ The Shanghai commission was participated in by delegates from China, United States, Great Britain, Austria, France, Germany, Italy, Japan, Netherlands, Persia, Portugal, and Russia. The delegates did not have plenipotentiary powers, but they recognized "that the use of opium in any form other than for medical purposes is held by almost every participating country to be a matter for prohibition or for careful regulation," that "the unrestrained manufacture, sale and distribution of morphine already constitutes a grave danger, and that the morphine habit shows signs of spreading," and that "it is the duty of all countries to adopt reasonable measures to prevent at ports of departure the shipment of opium, its alkaloids, derivatives and preparations to any country which prohibits the entry" of the same.¹⁷

These resolutions resulted in the call by President Taft of an international conference,¹⁸ which met at The Hague in 1912 and was attended by plenipotentiaries from the twelve nations represented on the Shanghai Commission, with the exception of Austria and the addition of Siam.¹⁹ These plenipotentiaries signed a convention²⁰ by which the contracting Powers agreed "to control the production and distribution of raw opium, . . . gradually and effectively to suppress the manufacture and trade in prepared opium [*i.e.*, opium suitable for consumption other than medical], . . . to limit exclusively to medical and legitimate purposes the manufacture, sale and use" of medical opium, morphine, cocaine, heroin, and all new derivatives of these products "which may be shown by scientific research generally recognized, to be liable to similar abuse and productive of like ill effects"; to prevent the smuggling of any of these products into China, and to communicate through the Ministry of Foreign Affairs of the Netherlands laws and statistical information on the subject. Throughout the convention the principle was adopted of requiring the exporting country to restrict or

of Nations, Records of the First Assembly, 5th plenary session, p. 543. There has been much smuggling from the United States (*H. of R., Hearings*, 1923, pp. 83, 101).

¹⁴ See articles by Dr. Hamilton Wright, this *JOURNAL*, Vol. 3, pp. 648, 828; Vol. 6, pp. 865, 867 and *Proceedings of the American Society of International Law*, 1909, p. 89.

¹⁵ See statement by Bishop Brent, Opium Committee, 5th sess., *Minutes*, p. 50.

¹⁶ This *JOURNAL*, Vol. 5, p. 468.

¹⁷ *Ibid.*, SUPPLEMENT, Vol. 3, p. 275.

¹⁸ *Ibid.*, Vol. 5, p. 469.

¹⁹ See articles by Dr. Hamilton Wright, this *JOURNAL*, Vol. 6, p. 865; Vol. 7, p. 108.

²⁰ SUPPLEMENT to this *JOURNAL*, Vol. 6, p. 177; *H. of R., Hearings*, 1923, pp. 127-134; *U. S. Treaty Series*, No. 612; *League of Nations, Document*, O. C. 1(1).

prohibit the export of these products contrary to the laws of the importing country.²¹

The convention "recognized the futility of an attempt on the part of a minority of the Powers of the world to bring under control the international traffic" ²² in drugs, and so authorized the Netherlands Government to invite adhesion to the convention by thirty-four other states. Deposit of ratifications was postponed until the results of this action should be known. A second and a third conference in 1913 and 1914 failed to obtain the signature of Turkey, the leading producer of opium next to India, of Switzerland, an important manufacturer of opium derivatives, and of other countries. Consequently, though some ratifications were deposited, no states had signed the protocol which had been arranged at the 1914 conference for putting the convention into effect, before the World War.

Seven states, including the United States and China, signed the protocol during the war period,²³ and the peace treaties with Germany (Art. 295), Austria (Art. 247), Bulgaria (Art. 174), Hungary (Art. 230), and Turkey (Art. 280) provided that all parties to these treaties should automatically become parties to the protocol putting the opium convention into effect. The Turkish Peace Treaty (Sèvres) was not ratified, but by the Treaty of Lausanne (Art. 100 (9)), signed in August, 1923, Turkey accepted the opium convention, making the forty-seventh state to become bound by it.²⁴ With the exception of *Chile*, Ecuador, and *Salvador*, these forty-seven states have signed the protocol putting the convention into effect. The free city of Danzig under the protection of the League of Nations is in the same category. Of the remaining seventeen states, thirteen (*Argentina*, *Colombia*, *Costa Rica*, Dominican Republic, *Estonia*, *Latvia*, *Lithuania*, Mexico, Monaco, *Paraguay*, *Persia*, *Russia*, and *Switzerland*) have signed but not ratified the convention; four (*Abyssinia*, Afghanistan, *Albania*, and Lichtenstein) have neither signed nor ratified. *Persia* and *Switzerland*, the most important of these states from the standpoint of the opium trade, have both expressed the intention of ratifying the convention at an early date.²⁵ The states printed in italics, as members of the League of Nations, have been especially urged by that organization to complete ratification of the convention.²⁶

Most countries bound by the convention have passed laws to give it

²¹ On this principle see H. Wright, this JOURNAL, Vol. 7, p. 122.

²² See this JOURNAL, Vol. 7, p. 125, on Article 24 of the convention.

²³ *League of Nations, Document, O. C. 1(1)*, pp. 23, 25; the United States signed the convention, January 23, 1912, deposited ratifications December 10, 1913, signed the protocol February 11, 1915, and proclaimed the convention, March 3, 1915 (*ibid.*, p. 28, *U. S. Treaty Series*, No. 612).

²⁴ Opium Committee, 5th sess., *Minutes*, p. 131.

²⁵ See Opium Committee, 4th sess., *Minutes*, p. 60; 5th sess., *Minutes*, p. 124; *Journal of the Fourth Assembly*, p. 210; *League of Nations, Monthly Summary*, Vol. 3, p. 220.

²⁶ *Journal of the Fourth Assembly*, pp. 156, 210.

effect.²⁷ The United States by the Jones-Miller Act of 1922 provided for drastic regulation of importation and exportation through the federal narcotics board.²⁸ In spite of these efforts, conditions with regard to the use of narcotics have become worse since the war. Poppy growing has been reestablished in China and morphine and cocaine are being smuggled in in great quantities.²⁹ These products, as well as synthetic narcotics of similar effect, are being manufactured in excess of medical requirements in Europe.³⁰ It is estimated that one million drug addicts live in the United States.³¹ National control has not proved effective to enforce the 1912 Convention.

The third stage in the history of opium and dangerous drug control is marked by the agreement of the members of the League of Nations to "intrust the League with the general supervision over the execution of agreements with regard to the traffic in . . . opium and other dangerous drugs" (Covenant, Art. 23, c).

In pursuance of this clause the First Assembly of the League (December 15, 1920) resolved that an advisory committee on the traffic in opium and other dangerous drugs be appointed by the Council.³² This the Council did by a resolution of February 21, 1921,³³ which provided for representatives

²⁷ For state of legislation in 1912 see this JOURNAL, Vol. 6, pp. 886 *et seq.*; reports on recent legislation, Opium Committee, 4th sess., *Minutes*, pp. 81 *et seq.*; 5th sess., *Minutes*, pp. 125 *et seq.*

²⁸ The Act of February 23, 1887 (24 Stat. 409, Comp. Stat. sec. 8792-8799) prohibited importation of non-medicinal opium into the United States by Chinese or into China by Americans. An Act of February 14, 1902 (32 Stat. 33, incorporated in the Federal Criminal Code, 1910, Art. 308) forbade the sale of opium to natives of the Pacific Islands. An Act of February 9, 1909 (35 Stat. 614, Comp. Stat. sec. 8800) prohibited all importation of non-medicinal opium into the United States. On January 17, 1914, this act was amended (38 Stat. 275, Comp. Stat. sec. 6287, a-f, 8801, a-f) to prohibit exportation from the United States of narcotics, contrary to the law of the importing country. The Harrison Act of December 17, 1914 (38 Stat. 785, Comp. Stat. 6287, g-q) required registration of persons producing, importing or manufacturing opium, coca leaves or their derivatives and limiting their sale of these products in the United States and its territories. This Act was amended by the Jones-Miller Act of May 26, 1922 (42 Stat. 596), which established the Federal Narcotic Control Board composed of the Secretaries of State, Treasury and Commerce with power to determine the amount of narcotic products to be imported for medicinal and scientific purposes, to prevent export of such products to countries not parties to the opium convention of 1912 and to restrict export to countries parties to that convention to "authorized permittees." For discussion of these laws see *League of Nations Official Journal*, 1922, Vol. 3, p. 1038; Opium Committee, 5th sess., *Minutes*, pp. 24, 27.

²⁹ *Supra*, notes 12, 13.

³⁰ Report on the discussions of the mixed sub-committee of the Health Committee and of the Advisory Committee on the Traffic in Opium, Jan. 9, 1923, Opium Committee, 4th sess., *Minutes*, pp. 43-44, 126-128; Statement on the manufacture of morphia, other opium derivatives and cocaine, May 11, 1923, *ibid.*, 5th sess., *Minutes*, pp. 67-80, 153-165; H. of R., *Hearings*, 1923, pp. 25-28, 118-119.

³¹ H. of R., *Hearings*, 1923, pp. 24, 119-120.

³² *League of Nations, Records of the First Assembly, 1920, Plenary Meetings*, p. 538.

³³ *League of Nations Official Journal*, Vol. 2, pp. 114-115. The Serb-Croat-Slovene state

on the commission from China, France, Great Britain, India, Japan, Netherlands, Portugal and Siam and three non-voting assessors. Among the latter the Council named Mrs. Hamilton Wright, whose late husband ably represented the United States on the Shanghai Commission of 1909 and the Hague Conference of 1912. Germany has had a representative since the second session of the advisory commission,³⁴ and as a result of the urgent invitation of the Council on September 26, 1922, upon recommendation of the Assembly, the United States has been represented in an "unofficial and consultative" capacity at the fourth session by Assistant Surgeon-General Dr. Rupert Blue, and at the fifth session by a delegation consisting of Hon. Stephen G. Porter, Chairman of the Committee on Foreign Affairs of the House of Representatives, Bishop Brent, who was on the American delegation to the Shanghai Commission and the Hague Conference, Assistant Surgeon-General Blue, and Mr. Neville as technical expert.³⁵

The advisory committee is the central agency of the League's supervision of the opium traffic. It is supplied with data and statistics by the Secretariat of the League, which receives all reports from the parties to the convention who are also members of the League, thus practically superseding the functions assigned to the Netherlands Government by the Convention of 1912 (Art. 21).³⁶ On the basis of this material, the advisory committee presents resolutions to the Council and the Assembly. The Council has usually endorsed the advisory committee's report with little modification. In the Assembly, on the other hand, extensive debate has frequently taken place on the report both in the fifth committee and in plenary session. Opium-producing states such as India and Persia, drug-manufacturing states such as Switzerland, Japan and France, states with a large interest in the opium traffic such as Great Britain, Portugal and Netherlands, and opium and drug-consuming states such as China, are here represented.³⁷ These debates have been remarkably frank and have often disclosed great diversities of opinion, but in most cases the resolutions ultimately adopted by the Assembly have not departed far from the recommendations of the advisory committee.

The League's work has been concerned, first, with obtaining general

has been asked to send a representative, but has not replied (*ibid.*). The Fourth Assembly suggested an invitation to Turkey (Resolution 2, *Journal of the Fourth Assembly*, p. 210).

³⁴ See resolution 12, *Records of the Second Assembly, 1921, Plenary Meetings*, p. 541; Opium Committee, 2nd sess., *Report*, pp. 2-3.

³⁵ *League of Nations, Records of the First Assembly, 1920, Plenary Meetings*, p. 538; *Monthly Summary*, Vol. 2, pp. 244, 266; Opium Committee, 4th sess., *Minutes*, p. 9; 5th sess., *Minutes*, p. 123; *The Traffic in Habit-Forming Drugs, Statement of the attitude of the United States*, Washington, 1923, pp. 1-3.

³⁶ Opium Committee, 2nd sess., *Resolutions*, p. 2.

³⁷ The American representatives at the Fifth session of the Advisory Committee on Traffic in Opium were present also at the meetings of the fifth committee of the Fourth Assembly which dealt with the opium question. See *Journal of the Fourth Assembly*, p. 156.

ratification of the Opium Convention of 1912 and the protocol putting it into effect. Every Assembly has passed resolutions urging League members to ratify, with the result that nearly all states of importance in the trade are either bound by the convention or have promised to ratify soon. Of the fifty-four members of the League, forty-three are parties to the convention, and two more, Persia and Switzerland, have promised soon to become so. Of the ten states not in the League, four are parties to the convention.³⁸

The second aspect of the League's work is supervision of the execution of the convention. To this end it has attempted to have all states parties to the convention and important in the opium and dangerous drug trade represented on the advisory committee even though not members of the League. Germany and the United States are both now on the commission. Jugo-Slavia and Turkey have been invited.³⁹ The advisory committee, with the aid of the League Secretariat, has prepared statistics with regard to the production⁴⁰ and consumption⁴¹ of opium and dangerous drugs so far as available data permits. It has likewise given publicity to the national laws and regulations enforced by the states in pursuance of the Convention of 1912,⁴² and to all information received with regard to seizures of illicit opium and narcotics.⁴³ In order to make this information more complete, the Assembly has requested the submission to the Secretariat of annual reports by the members of the League parties to the convention and particularly of information with regard to important seizures.⁴⁴ Finally, the League has recommended measures to be taken by the parties to the convention to assure a more adequate enforcement, such as the imposition of severe penalties upon individuals engaging in illicit trade in narcotics,⁴⁵ and the requirement of the production of a certificate from the importing government before export is permitted. Detailed regulations with regard to import and export

³⁸ *Supra*, notes, 24-26. Ireland, though now an independent member of the League, was presumably included in the British ratification of the Opium Convention of 1912.

³⁹ *Supra*, note 33.

⁴⁰ The world production of opium has been estimated by the League Secretariat at about 3500 tons per year for 1920, 1921, and 1922 (Opium Committee, 5th sess., *Minutes*, p. 17). Mr. Porter has estimated the production for exportation at 1500 tons and for home consumption at 1000 tons (H. of R., *Hearings*, 1923, pp. 12-16, 24). He has estimated the amount necessary for medical and scientific purposes at seventy-five tons (*ibid.*, p. 12). Dr. Lambert estimated twenty-two tons as the medical requirements of the United States (*ibid.*, p. 27), which would make the world requirements 440 tons if the same ratio were applied to all countries.

⁴¹ For statistics on production and consumption of narcotic drugs, see *supra*, notes, 30, 31.

⁴² *Supra*, note 27.

⁴³ Opium Committee, 5th sess., *Minutes*, pp. 29-32, 36-37, 133-135. *Monthly Summary of the League of Nations*, Vol. 4, p. 14. (Feb. 1924).

⁴⁴ Resolution 5, *League of Nations, Records of the Second Assembly, 1921, Plenary Meetings*, p. 540; Resolution 1, *Journal of the Fourth Assembly, 1923*, p. 210 and Resolutions 4 and 5, Opium Committee, 5th sess., *Minutes*, p. 209. For form of report, see *ibid.*, 2nd sess., pp. 13-17.

⁴⁵ Resolution 7, Opium Committee, 5th sess., *Minutes*, pp. 109-110, 210.

certificates have been drawn up ⁴⁶ and thirty-four governments appear to have put them into effect,⁴⁷ including the United States.⁴⁸

A third aspect of the League's work has been the interpretation of the Convention of 1912 and, in case its terms are found inadequate, the recommendation of improvements. It is in this phase of the problem that the United States has been most interested. The Council, at its thirteenth session on June 28, 1921, adopted at the suggestion of the Chinese representative, Mr. Koo, an amendment to the first report of the advisory committee in the following terms:

That in view of the world-wide interest in the attitude of the League towards the opium question, and of the general desire to reduce and restrict the cultivation and production of opium to strictly medicinal and scientific purposes, the Advisory Committee on Traffic in Opium be requested to consider and report, at its next meeting, on the possibility of instituting an inquiry to determine approximately the average requirements of raw and prepared opium specified in Chapters I and II of the Convention for medical and scientific purposes in different countries.⁴⁹

This proposal gave rise to acrimonious debate in the fifth committee of the Second Assembly. The Indian representative, Mr. Sastri, thought the recommendation went beyond the terms of the Convention of 1912, which he contended recognized legitimate uses of opium not "strictly medical and scientific," that it was of doubtful expediency to declare the 1912 Convention out of date within a few months of its coming into force, and that in any case by the terms of Article 23 of the Covenant the League was confined to the execution of the existing treaty unless it wished to "convene another international conference and reopen the whole question before it." During the course of his remarks he referred to the extensive use of raw opium in India as a preventive of malaria and kindred diseases and said: "What would be the consequence of suddenly depriving them of the use of these simple remedies, containing opium as one of their ingredients, by confining the produc-

⁴⁶ See Resolution No. 4, Opium Committee, 1st sess., 1921, pp. 4, 6; Resolution 3, *Records of the Second Assembly, 1921, Plenary Meetings*, p. 539; Resolution 2, Third Assembly, 1922, Opium Committee, 4th sess., p. 12; Resolution 4, *Journal of the Fourth Assembly*, p. 211.

⁴⁷ Opium Committee, 5th sess., *Minutes*, pp. 124-125.

⁴⁸ *Ibid.*, 5th sess., *Minutes*, pp. 24, 27. For United States attitude on Resolution 2 of Third Assembly (Opium Committee, 4th sess., pp. 10-21; 5th sess., pp. 120-121), which provided that importation of opium and narcotics be refused from countries not parties to the 1912 Convention and which have not adopted the import certificate plan, see Secretary Hughes' letter of May 10, 1923, saying: "The United States is of the opinion that it would be better to obtain the adhesion of producing countries to the convention than to attempt a boycott." (*The Traffic in Habit-Forming Narcotic Drugs*, Washington, 1923, p. 3). The Jones-Miller Act of 1922 provides for such a boycott on exports (Opium Committee, 5th sess., p. 11).

⁴⁹ *League of Nations, Records of the Second Assembly*, 5th Committee, p. 429.

tion of raw opium in India—a tropical country—merely to what experts in Europe might catalogue under scientific and medical heads?" He also noted that "as the result of the strict legislation governing the traffic, India had already lost four millions of her annual revenue."⁵⁰ Mr. Koo, of China, defended the proposal, pointing out that it merely proposed an investigation and did not seek to impose obligations. "If the people of India," he said, "wish to improve their health by eating raw opium, such a practice would still be legal until India consented to give it up. . . . As one of the largest opium-producing countries in the world, India's cooperation is necessary and I feel certain that India will not fail to give it when she understands that it is cooperation which is sought from her and not compulsion which is imposed upon her."⁵¹ As a compromise, the resolution was finally approved by the fifth committee and by the Assembly with elimination of the word "strictly" and substitution of "legitimate" for "medical and scientific." The reference to "prepared opium" was also eliminated inasmuch as its complete suppression is provided for in the 1912 Convention.⁵²

At its second session, April 29, 1922, the advisory committee recommended that the Council invite the parties to the Convention of 1912 to furnish the Secretariat "a statement of their countries' total requirements for internal consumption per annum of opium and its derivatives indicating separately, if possible, the quantities employed respectively for medical, scientific and other uses." This resolution was approved by the Assembly.⁵³

The United States, though a party to the 1912 Convention, and though repeatedly urged by the League of Nations to participate in its work of enforcement, had preferred to act through the medium of the Netherlands Government as provided in the convention, until the fourth session of the advisory committee, January 8-14, 1923.⁵⁴ At this session the United States appointed Assistant Surgeon-General Blue as unofficial representative, and there was an energetic discussion upon the requirements of the convention with regard to the suppression of the production of opium for non-medical or non-scientific purposes, but no decision was reached.⁵⁵

On February 21, 1923, following hearings on all phases of the opium and drug question, Mr. Porter reported from the House Committee on Foreign Affairs, with the approval of the Secretary of State,⁵⁶ a resolution⁵⁷ which

⁵⁰ *League of Nations, Records of the Second Assembly*, 5th Committee, p. 344.

⁵¹ *Ibid.*, p. 350.

⁵² Resolution 10, *ibid.*, *Plenary Meetings*, p. 540. See also *League of Nations Monthly Summary*, Vol. 1, pp. 127, 145.

⁵³ Resolution 4, Opium Committee, 2nd sess., *Report*, pp. 5, 12, Third Assembly Resolution 3, *Monthly Summary*, Vol. 2, pp. 225, 244.

⁵⁴ *Supra*, note 35.

⁵⁵ Opium Committee, 4th sess., *Minutes*, pp. 38-43.

⁵⁶ Letter of Secretary Hughes, February 13, 1923, H. of R., *Hearings*, 1923, pp. 3-4; 67th Cong., 4th sess., H. of R., *Report No. 1678*, pp. 5-6.

⁵⁷ H. J. Res., 453, 42 Stat. 1431. See also, H. of R., *Hearings*, 1923; 67th Cong., 4th sess.,

declared it the "imperative duty of the United States Government to safeguard its people from the persistent ravages of habit-forming narcotic drugs; that effective control of these drugs can only be obtained by limiting their production to the quantity required for strictly medicinal and scientific purposes," and that, consequently, the President be requested to urge upon the Governments of Great Britain, Persia, and Turkey the immediate necessity of limiting the growth of the poppy, and upon the governments of Peru, Bolivia, and Netherlands the immediate necessity of limiting the production of coca leaves, to that quantity, and to report to Congress on the first Monday in December, 1923. This resolution was approved on March 2, 1923, and on May 10, 1923, Secretary Hughes instructed Representative Porter, Bishop Brent and Assistant Surgeon-General Blue "to attend in a consultative capacity" the fifth session of the League advisory committee on May 24. The instructions⁵⁸ stated that "the United States is quite convinced that the only basis for control of the traffic in narcotics is by means of international cooperation," and in view of the League's supervision of the Hague Convention of 1912 and of its invitation to the United States, "has decided to have representatives at these committee meetings in a consultative capacity." The instructions, however, insisted that the United States "can not be a party to any interpretation of the Hague Convention which weakens the force of that instrument as a means for controlling the traffic in narcotic drugs" and consequently "is convinced that no effective cooperation can be expected unless the first two (of the attached resolutions) are accepted." These resolutions provided:

1. If the purpose of the Hague Opium Convention is to be achieved according to its spirit and true intent, it must be recognized that the use of opium products for other than medicinal and scientific purposes is an abuse and not legitimate.

2. In order to prevent the abuse of these products it is necessary to exercise the control of the production of raw opium in such a manner that there will be no surplus available for non-medicinal and non-scientific purposes.

These proposals were ably presented to the fifth session of the commission in May and June, 1923. Bishop Brent showed the necessity of this interpretation to control the use of opium based on his experience in the Philippines and in China.⁵⁹ Congressman Porter endeavored to show that these principles were necessary deductions from the terms of the 1912 Convention. He relied upon the legal maxim "that one section of an instrument cannot be so construed as to defeat the purpose of the whole document." The purpose of suppressing all non-medical and non-scientific use of opium and

H. of R., *Report No. 1678*; Remarks of Hon. Stephen G. Porter in the House of Representatives, Feb. 26, 1923.

⁵⁸ *The Traffic in Habit-Forming Narcotic Drugs*, Washington, 1923, pp. 1-3.

⁵⁹ Opium Committee, 5th sess., *Minutes*, pp. 11-13.

drugs was evident from Chapters II and III, which provided for "the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium with due regard to the varying circumstances of each country concerned" (Art. 6) and for "the limitation exclusively to medical and legitimate purposes of the manufacture, sale, and use of morphine, cocaine and other drugs" (Arts. 8, 14). "To assume or argue," he said, "that Article 1, providing for 'the control of the production and distribution of raw opium' means anything but such control as will prevent a surplus available for abusive use is plainly a construction that defeats the very purpose of the convention itself."⁶⁰

The majority of the committee agreed to the American proposals in principle and one of the assessors, M. Brenier, who had served as chairman of the drafting committee at the Hague Conference of 1912, explained the intent of these articles, which he thought did not "contradict in principle the declarations of the American Delegation." The thought of the drafters of Article 6, he said, was "exactly interpreted" by the opinion of the legal section of the League Secretariat as follows:⁶¹

The complete and effective suppression of the manufacture of, home trade in, and use of prepared opium constitutes one of the ultimate obligations undertaken by governments under the 1912 Convention; but it is for each state to decide, according to individual circumstances, as to the precise manner in which its suppression may be brought about.

Mr. Campbell, representing India, however, said:

If it was contended that the meaning of the convention was that the Government of India could not allow the production of any opium unless that opium was destined solely for scientific or medical requirements, then he was afraid that his government could not accept that interpretation. . . . That interpretation seemed to him contrary to the terms of the convention. . . . It would stultify the whole of Chapter II of the convention. The committee would find that Chapter II, while requiring the gradual suppression of the use of prepared opium, definitely provided a procedure under which the use of this prepared opium could continue pending suppression. If Mr. Porter's argument were accepted, it would follow that opium could not be produced for a purpose for which the convention itself made provision.⁶²

The Netherlands and Japanese delegations seemed to share these doubts.⁶³ Further debate,⁶⁴ however, resulted in the following resolution:⁶⁵

The Advisory Committee on the Traffic in Opium accepts and recommends to the League of Nations the proposals of the United States representatives as embodying the general principle by which the governments should be guided in dealing with the question of the abuse of

⁶⁰ Opium Committee, 5th sess., *Minutes*, pp. 13-16.

⁶¹ *Ibid.*, p. 23.

⁶² *Ibid.*, p. 19.

⁶³ *Ibid.*, pp. 21, 23.

⁶⁴ *Ibid.*, pp. 81-105, 111-119, during part of this discussion the American delegates retired.

⁶⁵ *Ibid.*, pp. 118, 202, 208.

dangerous drugs and on which, in fact, the International Convention of 1912 is based, subject to the fact that the following reservation has been made by the representatives of the Governments of France, Germany, Great Britain, Japan, the Netherlands, Portugal and Siam:

"The use of prepared opium and the production, export and import of raw opium for that purpose are legitimate so long as the use is subject to and in accordance with the provisions of Chapter II of the convention.

"The representative of the Government of India associates himself with the foregoing resolution, subject to the following reservation regarding paragraph I:

"The use of raw opium, according to the established practice in India, and its production for such use are not illegitimate under the convention."

The American delegation accepted these resolutions with the statement that "the reservation made by the representatives of the Governments of France, Germany, Great Britain, Japan, the Netherlands, Portugal and Siam . . . appears to be but a reaffirmation of Chapter II of the Hague Opium Convention, and, as such, gives rise to no question."⁶⁶ Bishop Brent remarked that "the degree of unanimity which had been attained in the committee marked perhaps the greatest progress which had been made since the question had first become an international responsibility."⁶⁷

It was, however, recognized that the Convention of 1912 must be supplemented if full effect was to be given to these principles. Consequently the calling of two international conferences was proposed.⁶⁸ One of these conferences was to be composed of representatives of countries producing raw opium and coca leaves, of countries manufacturing drugs from these products, of countries which temporarily recognize the use of prepared opium, and of China, to agree as to a limitation upon the amount of morphine, heroin cocaine and their salts to be manufactured, upon the reduction of production, export and import of raw opium and coca to the amount required for this manufacturing demand, other medicinal and scientific demands and the demand for smoking in countries where it is still allowed. The other conference was to consist of representatives of countries with Far-Eastern territories which still recognize the use of prepared opium, to agree upon plans for its gradual suppression in pursuance of Chapter II of the 1912 Convention.

The Assembly approved these resolutions at its fourth session on September 27, 1923, and at its meeting on December 13 the Council fixed the date of the latter conference for November 3, 1924, and of the former for November 17, 1924.⁶⁹ The resolution introduced in the United States Congress on

⁶⁶ Opium Committee, 5th sess., *Minutes*, p. 203.

⁶⁷ *Ibid.*, p. 119.

⁶⁸ *Ibid.*, pp. 208-209.

⁶⁹ *League of Nations, Journal of the Fourth Assembly*, pp. 210-212; *Monthly Summary*, Vol. 3, p. 310. On March 15, 1924, the council authorized the special preparatory committee on which the United States is represented by E. L. Neville, to draft the agenda for both of these conferences.

January 28, 1924, provides for American participation in one or both of these conferences.⁷⁰

The numerous discussions of the opium problem, here reviewed, seem to have brought general agreement upon three principles:

(1) The use of opium for purposes other than medicinal or scientific is an evil and should be abolished. Warren Hastings in 1735 expressed a view prevalent in his time when he declared "opium is not a necessary of life but a pernicious article of luxury which ought not to be permitted, except for purposes of foreign commerce only."⁷¹ In 1895 a British parliamentary commission, after extensive inquiry found, with one dissenting opinion, that there was "no evidences of extensive moral or physical degradation" resulting from the use of opium in India, and that it was not advisable that the growth of the poppy and manufacture of opium, except for medicinal purposes, be abandoned in India.⁷² An official report of 1922 reached similar conclusions.⁷³ The Maharajah of Nawanagar in the League of Nations Assembly, supported by other representatives of India, though admitting the evil effect of opium smoking, which is taboo in India, insisted that opium eating as practiced in India furnishes a necessary sedative in the hot climate and is regarded as the "Indian parallel of wine and beer in Europe and America."⁷⁴ Nevertheless the general opinion in China, the opinion of popular Indian leaders such as Mahatma Gandhi and Rabindranath Tagore, and the overpowering medical opinion of the Western world, regards the use of narcotics, except by medical prescription, as deleterious,⁷⁵ and this opinion is now accepted by the League of Nations and the United States.

(2) The non-medical use of opium and narcotic drugs can only be suppressed by curtailing their production. Efforts at control of consumption and of trade have proved abortive because of the great value in proportion to bulk and the consequent ease of smuggling. If opium and narcotic drugs exist in large quantities they will get to the addict even through prison walls.

This principle is also accepted by the League of Nations and the United States, but great difficulties still exist in the way of giving it practical effect.

⁷⁰ *Supra*, note 1.

⁷¹ Opium Committee, 5th sess., p. 11.

⁷² H. of R., *Hearings*, 1923, p. 124.

⁷³ Dixon, *The Truth about Indian Opium*, India Office, 1922. See H. of R., *Hearings*, 1923, pp. 88 *et seq.* and Opium Committee, 5th sess., *Minutes*, p. 111.

⁷⁴ League of Nations Third Assembly, 11th Plenary Meeting, Sept. 19, 1922. See also statement of Lieut.-Col. John Ward, British Empire (*ibid.*), of Mr. Sastri, India (*Records of the Second Assembly*, 5th committee, p. 343) and of Mr. Campbell, India. (Opium Committee, 5th sess., *Minutes*, pp. 17-18).

⁷⁵ *Supra*, note 7. See also Tarakanth Das (H. of R., *Hearings*, 1923, pp. 94-96); U. S. Report of Committee appointed by the Secretary of the Treasury, March 25, 1918 (*ibid.*, p. 121); Bishop Brent (Opium Committee, 5th sess., *Minutes*, pp. 11-12); League of Nations, mixed subcommittee of health and opium committees, Jan. 9, 1923 (*ibid.*, 4th sess., *Minutes*, pp. 126-127); Lord Minto, Governor-General of India (this JOURNAL, Vol. 5, p. 466) and Hamilton Wright (this JOURNAL, Vol. 6, p. 886).

There is the technical difficulty. No accurate data exist for determining the amount of production necessary to supply the world's medicinal and scientific needs.⁷⁶ Restriction without such data might lead to a serious famine of necessary medical drugs. No universal medical opinion exists as to what are dangerous drugs. American medical opinion regards codeine in that category, but most European physicians insist that it is harmless.⁷⁷ Then there are economic difficulties. Countries such as India, Persia, Turkey, and the Dutch Indies get large revenues from the opium monopoly or excise. This influence has been most prominent in preventing prohibition.⁷⁸ These countries not unreasonably feel that they will be discriminated against if production is curtailed. The poppy requires peculiar climatic conditions and is produced in comparatively few countries, China, India, Turkey, Persia, Yugoslavia and to a slight extent Afghanistan, Formosa, Egypt and Greece. Coca leaves from which cocaine and codeine are made are grown in Peru, Bolivia and Java.⁷⁹ These countries, except China, have not themselves suffered greatly from the drugs. India particularly, whose low-grade opium would be superseded for medicinal uses by Turkish and Persian opium, feels aggrieved. The Maharajah of Nawanagar, after noticing the sacrifice both of government revenue and of wealth to the individual producer which India is asked to make, says: "It is difficult when the economy of our daily lives is affected and badly affected, for all of us to be philanthropists all the time."⁸⁰ There is the administrative difficulty of actually preventing production. While poppy and coca growing can be prevented if government services are sincere and reasonably efficient, prevention of manufacture of synthetic narcotics from simple chemicals may present greater difficulties.⁸¹ Finally, there is the political difficulty. Govern-

⁷⁶ *Supra*, notes, 40, 41. Opium Committee, 5th sess., *Minutes*, p. 80.

⁷⁷ *Ibid.*, pp. 68-72.

⁷⁸ The influence of the financial situation in Persia, Turkey, and India is discussed in a memorandum by Mrs. Hamilton Wright, June 6, 1923 (Opium Committee, 5th sess., *Minutes*, pp. 193-200). See also statement by Bishop Brent, *ibid.*, p. 11. The importance of opium in the Indian budget has been much discussed. In 1910 the Indian Government appears to have derived 8,000,000 pounds from the domestic excise and the sales for export which constituted 10 per cent of the total Indian revenues. Half of this revenue was sacrificed by the Chinese agreement of 1911 while the revenue from other sources increased with the result that at present 4,000,000 pounds is received from opium, about 3 per cent of the total revenues. (Statement by Mr. Sastri, *Records of Second Assembly*, 5th committee, p. 340, and by Mr. Campbell, Opium Committee, 5th sess., p. 18. See also H. of R., *Hearings*, 1923, pp. 24, 96-98.) The value of the poppy crop to the producer is twice its value to the government according to the Maharajah of Nawanagar (3rd Assembly, 11th Plenary Meeting, 1922), but he overlooks the possibility of substituting other crops. (See Opium Committee, 5th sess., *Minutes*, p. 194, H. of R., *Hearings*, p. 98.)

⁷⁹ See statistics of world production of opium, Opium Committee, 5th sess., *Minutes*, p. 178, and U. S. resolution, 1923, *supra*, note 57.

⁸⁰ League of Nations, Third Assembly, 11th Plenary Meeting.

⁸¹ See 13th Resolution of Second Assembly, *Records, Plenary Meetings*, p. 541, and speech

ments are reluctant to subject their internal policy to the regulation or scrutiny of other governments or international agencies. Granting an agreement upon the amount of opium, morphine, cocaine, and other narcotics necessary for the world's legitimate requirements, how shall the growth and manufacture of this requirement be apportioned among the several states? This will doubtless be the leading question before the conference which meets November 17.⁸²

(3) Drug control cannot be effective unless it is international. Anyone of the important poppy-growing countries can much more than supply the world's medical and scientific needs. Therefore, with the present world character of trade, production must be restricted everywhere or it will be useless. This has been recognized in the efforts to bring about universal acceptance of the 1912 Convention. But general acceptance of the obligation is not enough. There must be confidence in its enforcement. This can only come with international supervision. India is not unnaturally reluctant to stop the lucrative business if China continues to produce illegally because of a feeble or corrupt administration. If the League can in fact supervise and give publicity to anti-narcotic administration in such a way as to make it effective and to create general confidence in its effectiveness in all countries, it will present prospects of success where other efforts have failed.

of French representative, *ibid.*, p. 537; Opium Committee, 2nd sess., *Report*, pp. 9, 29; 4th sess., *Minutes*, p. 43.

⁸² *Supra*, note 68.

EDITORIAL COMMENT

RATIFICATION OF TREATIES IN GREAT BRITAIN

The first Labor Government of Great Britain, of which Mr. James Ramsay MacDonald is Prime Minister, and the very head and front, is responsible for a change of policy which, if maintained, will in one respect at least tend toward "the Americanization of the British Constitution." It appears that on April first, of the present year, Mr. Arthur Ponsonby, Under-Secretary for Foreign Affairs, moved in the House of Commons the second reading of the bill to ratify the Treaty of Lausanne, concluded by Great Britain and other Powers with Turkey on July 24, 1923. There was nothing unusual in the motion, but he followed it with an announcement, according to the Associated Press,¹ "that in order to strengthen the control of Parliament over international treaties the government had decided that in the future Parliament would be allowed an adequate opportunity for the discussion of all treaties before their final ratification. He said that hitherto there had been no constitutional obligation on the government of the day to submit treaties before ratification."

Any government of the day could take the Parliament into its confidence before proceeding to the ratification of a treaty, but the importance of Mr. Ponsonby's statement lies in the fact that His Majesty's Government—for such it is—has adopted the policy of publicity in the matter of treaties. It is, however, too much to say with Mr. H. A. L. Fisher, a Liberal member of Parliament and former Cabinet officer, that such action on the part of the government would necessarily entail "the Americanization of the British Constitution." Even in respect to treaties, the proposed policy does not go so far as American practice, although the government proposed, to quote again the Associated Press, to "lay on the table in both Houses of Parliament every treaty, when signed, for a period of twenty-one days, after which the treaty would be ratified and published and in the event of important treaties an opportunity for discussion would be given within this period." It is further stated that the government intended to submit "to the House all agreements, commitments and understandings which might in any way bind the nation to specification."

It is a correct conclusion that by such a practice, secret treaties—a summation devoutly to be wished—would be rendered improbable. It is perhaps too much to say impossible, for they could be concluded, but their terms would become public before ratification, and the British electorate

¹ The *Washington Post*, April 2, 1924, p. 3.

would understand in advance of ratification what obligations the government in power was concluding, by which every man, woman and child of the vast British Empire would be bound. One can, however, understand that the older parties were aghast, for if the new policy of publicity thus inaugurated should commend itself to Parliament and to the people who choose the members of Parliament, it is evident that the ways of diplomacy would become the talk of the man in the street, and that international secrets would cease to be the patrimony of the select few, who, in their self-sufficiency, have bound their countrymen in times past to policies which they themselves condemn when reason has replaced the passion of the moment. John Bright was beaten for reelection to Parliament because he opposed the Crimean War of 1854-1856, waged by Turkey, France and Great Britain, on the one hand, against Russia on the other. Yet within a generation as sturdy a defender of the past as Lord Salisbury maintained that that very war was a mistake.

It is too much to hope that the people will always be wise enough to descry the ultimate danger lurking in a treaty or convention with foreign countries, yet it cannot be doubted that the policy of publicity, taxing them at the source with knowledge in advance of ratification, will exercise a sobering effect—and sobriety in foreign relations is not the least of the world's desiderata.

The method by which the American public learns of treaties and conventions is different from that proposed at present by the British Government. From the meager statement transmitted by the Associated Press, it does not appear that the treaty or convention or agreement is to be approved in express terms by the Commons and the Lords. In effect, it is little less than that, because the government would hardly proceed to the ratification of a treaty which meets with the disapproval of the House of Commons, although it might not be deterred from this course by opposition of the Lords. But the control of the public over treaties is assured, if only they be laid before Parliament in advance of their ratification, and an opportunity be given to public opinion to express itself. For the people really rule today, in most countries, whether the form of government be monarchical or republican.

It is a break with the past to make secret agreements public, either before their ratification or within a reasonable time afterward, and yet there is no difficulty in the matter. A nation should not enter into a treaty with a foreign country, whose terms it is unwilling to disclose. And if the terms of a treaty cannot for one reason or another be disclosed, that would seem to be in itself proof positive that it should not be contracted.

The Government of the American Union cannot make secret treaties—at least it cannot be bound by them if made, because a treaty, or convention, or international agreement, only becomes binding when its ratification is advised and consented to by the Senate, and it only becomes a law of the land by promulgation as such by the President of the United States. Yet,

notwithstanding the requirement of publicity, the Government of the United States has entered into all treaties which have seemed to be necessary to the protection of its interests. Other countries may do so, if it be their desire. Publicity cannot be expected to prevent wars, but publicity can prevent the negotiation of treaties which, if concluded and ratified by the nations, bind them to go to war. There is perhaps no one method to preserve peace, but there are many approaches, and the publication of all agreements is one of the steps toward the goal which we should have, and which it is to be hoped we will have more clearly before our eyes than ever in the past.

Of a truth, "The old order changeth, yielding place to new."

JAMES BROWN SCOTT.

EXTRADITION TREATIES AND THE DEATH PENALTY

Attached to the extradition treaty between the United States and Costa Rica, signed November 10, 1922, and since ratified, there was an exchange of notes concerning the death penalty which seems to be of sufficient interest to draw attention to certain developments in this type of international agreement. The essential portions of these notes are as follows. In answer to the statement of the Costa Rican Minister of Foreign Relations "that it is understood that the Government of the United States of America gives assurance that the death sentence will not be passed upon criminals surrendered by Costa Rica to the United States of America for any one of the crimes enumerated in the said treaty, and that that assurance will form an effective part of the treaty and that it will be so mentioned in its ratification," Mr. Davis, American Minister at San José, in repeating the words just quoted, added: "In order to make this assurance in the most effective manner possible, it is agreed by the United States, that no person charged with crime shall be extraditable from Costa Rica upon whom the death penalty can be inflicted for the offense charged by the laws of the jurisdiction in which the charge is pending."¹

Of the extraditable crimes listed in the treaty none is punishable by the death penalty in Arizona, Kansas, Maine, Michigan, Missouri, North Dakota, Oregon, Rhode Island, South Dakota, Washington, and Wisconsin. Treason, punishable by death in Arizona and Michigan as well as by Federal law, is not an extraditable offense. With the exception of the states listed murder, arson, and rape are generally punishable by death throughout the United States, and together with piracy, under the Federal statutes. Noth-

¹ SUPPLEMENT to this JOURNAL, Vol. 17 (1923), pp. 221, 222. See upon this subject generally, J. Saint-Aubin, *L'Extradition et le droit extraditionnel*, Vol. I, pp. 695-703; Maurice Travers, *Le droit pénal international*, Vol. III, pp. 313-322; and P. Leboucq, "Influence en matière d'extradition de la peine applicable dans le pays requérant," *Clunet*, Vol. 38 (1911), pp. 437-449.

ing, therefore, in the reservation is in conflict with the systems of penal law prevailing in the eleven states above named. For capital crimes under the laws of the United States and territories and of thirty-seven of the forty-eight states, the effect of the reservations is to eliminate the most serious crimes, namely, first degree murder, rape, and generally arson from the list of extraditable offenses. International extradition being wholly a Federal matter, the validity of such a provision, whatever be the theory of constitutional limitations upon the treaty-making power, is unquestionable.

The notes exchanged are in identical language with those previously exchanged and attached to the extradition treaty between the United States and Portugal of May 7, 1908, negotiated by Secretary Root. The provision appears in the Senate resolution consenting to ratification and in President Roosevelt's proclamation of that treaty. A similar provision appears in the body of the extradition treaty between England and Portugal of October 17, 1892.

These reservations appear to be in the nature of concessions made by the United States in favor of the prevailing sentiment in Portugal and Costa Rica (with neither of which had the United States previously had extradition treaties) against capital punishment which Portugal had abolished in 1867 and Costa Rica in 1880. The other Latin-American states which have abolished the death penalty are Venezuela (1864), Guatemala (1889), Colombia (1890), Brazil (1891), Nicaragua (1893), Honduras (1894), Ecuador (1897), Panama (1917), and Uruguay (1918).

Similar legislation has taken place in Europe, viz., San Marino (1848), Roumania (1864), Portugal (1867), Holland (1870), Italy (1888), Norway (1895), and in fifteen of the Swiss cantons since 1896. In the Swiss cantons and in some of the Latin-American states statutory provisions have been made limiting extradition so as to avoid surrender where the death penalty might follow. Others again have attempted unsuccessfully through diplomacy to condition surrender upon the promise of the demandant state that the death penalty would not be inflicted notwithstanding the unreserved terms of the extradition treaty involved. Such was the position taken by Portugal against France in the Albertini case, and by Argentina against the United States in the Damiano case.²

The policy of states which have abolished capital punishment came to be expressed in extradition treaties in a fairly uniform manner, the provision being that when an individual accused or condemned of crimes which according to the legislation of the demandant state involve the death penalty, shall be delivered on condition that the death penalty be commuted. This was the line taken in the treaty between Spain and Brazil (1872), in that between Portugal and Switzerland (1873), and in many others, to most of which a Latin-American state is a party. Usually the stipulation is to commute the death penalty to the next inferior punishment. This provision is

² This JOURNAL, Vol. 3 (1910), p. 694.

derived from the draft multilateral conventions on extradition of which the first (excluding the Lima draft of 1877) was that of Montevideo in 1889. The extradition convention of the Central American republics of 1907, the draft convention of the International Commission of Jurists held at Rio in 1912, and that of the Central American extradition convention signed at Washington in February, 1923, follow the Montevideo form. The United States has never adopted it. There may be constitutional difficulties so far as this country is concerned which would make its adoption awkward. The Root reservation now copied into the Costa Rican convention avoids this awkwardness, but Portugal and Costa Rica might seem to be indicated as havens of refuge for certain fugitives from justice from those states of the Union which retain the death penalty for murder, arson, and rape. However, no one is likely to venture to predict a wave of violent and atrocious crimes in those states because of the Portuguese and Costa Rican reservations.

J. S. REEVES.

BARON SERGE A. KORFF

A bare statement of the record of Baron Korff reveals the achievement of his life. Born in Russia March 4, 1876, he received his early education in that country. He was a graduate in law of the University of St. Petersburg, 1899. He served in the Russian Ministry of Finance and was sent on numerous missions to Paris, Berlin and London between 1899 and 1901. He was one of the secretaries of the International Red Cross Conference at St. Petersburg in 1902. He was sent by the Russian Ministry of Finance to Manchuria, China, and Japan in 1902. In 1906, the University of St. Petersburg conferred upon him the degree of Master of Constitutional Law, In 1906 and 1907, he gave courses on Russian law at the University of Helsingfors; and he was Titular Professor of Russian law and history in that University from 1908 until 1917.

In 1908, he delivered a course of lectures at Johns Hopkins University. In 1909 and 1910, he was Professor of both Constitutional and International Law at the College for Women, St. Petersburg. In 1910, he received the diploma of Doctor of Constitutional Law from the University of Dorpat. He became Executive Secretary of the International Red Cross Conference at Washington in 1912.

In 1917, Baron Korff became Lieutenant Governor General of Finland. He spent several months at the Peace Conference at Paris with the Russian delegation. Baron Korff returned to the United States in 1918, and thereafter became engaged in active academic work until his untimely death March 7, 1924. He was on the staff of Georgetown University School of Foreign Service. Simultaneously he was Professorial Lecturer at Johns Hopkins University, and in 1923-1924 a member of the faculty of Political

Science of Columbia University. In 1921, he gave the Harris course of lectures at Northwestern University. He was one of the group who started the Institute of Politics at Williamstown on its successful way in 1921. Brown University conferred upon him the degree of LL.D. in 1922. During the same year, he was elected an Associate of the Institute of International Law. He was a lecturer at the Academy of International Law at The Hague in 1923.

The foregoing record of achievement and of international recognition of it wholly fails to indicate the philosophy of the man or the place which he occupied in the hearts and minds of all who knew him. Baron Korff inspired students of public law in the United States with fresh zeal for inquiry into the political and legal problems of Europe, and especially those of Russia. The influence of his contribution to American thought and to the fields in which he sought to direct it was due not merely to his intellectual power but also to his personal charm and enthusiasm. He rejoiced to see the country in which he made his home and to which, through his marriage to the daughter of a distinguished officer of the United States Navy, Admiral Van Reypen, he was bound by strongest ties, making sympathetic and vigorous effort to fathom problems with which he himself was thoroughly familiar. To Americans he was not an alien, except in name. The universities of the United States claimed him as their own. At its last meeting, the American Political Science Association requisitioned him as a vice-president. To those who were blessed with his acquaintance or honored with his friendship he bequeathed something imperishable.

CHARLES CHENEY HYDE.

THE LIQUOR TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN

On January 23, His Excellency Sir Auckland Campbell Geddes, then British Ambassador to the United States, and the Honorable Charles Evans Hughes, Secretary of State of the United States, concluded a treaty on behalf of their respective governments, to prevent the smuggling of intoxicating liquors into the United States or the waters subject to their jurisdiction. Its ratification was advised and consented to by the Senate on March 31, 1924, without amendment or suggested modification.

This was as it should be, for the requirement of a two-thirds vote of the Senators present, meant nothing more nor less than a desire, indeed an intent, on the part of the framers of the Constitution to have the policy of the United States, in so far as it depends upon agreement with foreign nations, removed from partisan politics. In retaining the exercise of those sovereign rights which they did not expressly or impliedly delegate to the Government of the Union, or the exercise of which they did not themselves renounce, the States did not invest the Government of the Union with the exclusive right of concluding treaties, or international agreements, of any

and every kind, by which these United States were to be bound. As sovereign, free, and independent States—to use the language of the Articles of Confederation—they could individually or collectively have entered into treaties with foreign governments. They disentitled themselves from so doing by their own will; and what a State could have done before, a State could approve or disapprove afterward. Unanimous consent was too much to ask; a simple majority was too small a restraint. Therefore, the Senate, representing the States, was to advise either in advance or consent after the conclusion of an international obligation by the Executive Department of the Union. And that there should be no delay in awaiting unanimity, or no abuse of power on the part of an administration possessing a mere majority, the vote of an international agreement was made to depend upon the vote of two-thirds of the Senators who might be present.

Yet foreseeing that two-thirds of the Senators might be carried away by excitement or prejudice, and amend a treaty in such a way as to impair its usefulness or defeat the purpose for which it was drafted, the President of the United States is not required to exchange ratifications of a treaty which has been, in his opinion, disfigured. The action of the Senate is permissive, it is not mandatory. Hence it is, that an administration is wise to take the Senate into its confidence in advance of a treaty, in order that consent may be forthcoming ungrudgingly and without conditions after the conclusion of the treaty or convention.

Only a word or two need be said in order to make clear the purpose of the treaty. On January 29, 1919—approximately five years before the signing of the treaty—the eighteenth amendment to the Constitution of the United States was proclaimed as ratified by three-fourths of the forty-eight States of the American Union. Vesting Congress and the States with power to enforce it by appropriate legislation, the first section of the amendment provided that "the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purpose" was to be prohibited within a year after the adoption of the amendment. To enforce the provisions of the article, the Volstead Act—named after the member of Congress proposing it—was passed on October 28, 1919.

There is no doubt that strictly construed and rigidly enforced, the amendment and the act would apply to foreign as well as domestic vessels—domestic, upon the high seas; foreign, upon entering American waters. American ships may be eliminated from consideration. But what of foreign vessels? If we go upon the theory that justice be done though the heavens fall, they may be submitted when within our jurisdiction, to our laws as if they were domestic craft. There is, to be sure, a tendency to exempt a merchantman touching at our ports from jurisdiction even to the extent of allowing the officers of the vessel or consular officer of the country to which

it belongs, to punish offenses committed aboard the vessel, provided that they are not so serious as to disturb the peace and order of the community. This is an admitted concession, due to custom or to treaty—in the United States, solely to treaty. The concession is in many quarters claimed as an exemption under the practise of nations. It is better, however, to say, in the absence of treaty, that it falls rather within the rubric of comity, rapidly hardening into usage and custom—the very life and breath, as well as source of international law.

If it were international law, the constitutional amendment and the act of Congress to enforce it would nevertheless have to be obeyed within American jurisdiction. But the act of no country, however powerful, in derogation of international law—a law by the consent, expressed or implied, of all—cannot deprive a nation of its right under the law universally sought to be impaired by local statute. The officials of the government and the courts of the country, sworn to obey and to apply the laws, will do so, with the result that the foreign Power cannot secure redress in the courts for the violation of the principle of international law. The channels of diplomacy, however, remain untouched, and through them, protest is presented, and in the long run redress accorded. It has been so in this case. The right of British vessels to enter American jurisdiction with liquor aboard “listed as sea stores or cargo destined for a port foreign to the United States, its territories, or possessions on board British vessels voyaging to or from ports of the United States” is raised to the rank of an international obligation, so far as the contracting parties are concerned, “provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories, or possessions.”

The question naturally arises, where the jurisdiction of the United States ends, as far as foreign vessels are concerned, because beyond that line, the foreign vessel cannot be touched without the consent of its government by any vessel deriving its authority from an amendment to the Constitution or a statute of the United States made in pursuance of the Constitution. It was frequently stated in the arbitration of the North Atlantic Fisheries dispute at The Hague in 1910, that this limit was not determined. American counsel contested this point; but it is no longer open to argument or doubt, for the high contracting parties declare “that it is their firm intention to uphold [not to create] the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute [not will constitute] the proper limits of territorial waters.”

In times past, nations sought to extend their jurisdiction beyond this line indefinitely. The Government of the United States is desirous of apprehending British vessels hovering beyond this line, with the intent, it is believed, of surreptitiously crossing it and discharging their cargo illicitly

within American jurisdiction. The jurisdiction of the United States cannot be extended beyond the three-mile limit, and the right of visit and search cannot be exercised in pursuance of American sovereignty; consent can only come from the Power possessing the right. By Article II of the treaty of January 24, 1924, Great Britain, in the exercise of its sovereignty consents, in this wise:

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories, or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories, or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be initiated.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories, or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories, or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories, or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories, or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised.

It is foreseen by the contracting parties that mistakes might occur. The American vessel might be in doubt as to the invisible line separating American waters from the high seas; the clocks might differ, and other causes of error cause visit, search and seizure to result in injury and loss. This contingency is provided for in Article IV, in the following language:

Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article 2 of this treaty or on the ground that it has not been given the benefit of Article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the high contracting parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the claims commission established under the provisions of the agreement for the settlement of outstanding pecuniary claims signed at Washington the 18th of August, 1910, but the claim shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

The tribunal referred to, created under the treaty of August 18, 1910, is still in being; therefore, the high contracting parties did not need to create one for the purpose. It is composed at present of three members—one a subject of Great Britain, the Honorable Edward A. Mitchell Innes, one a citizen of the United States, the Honorable Robert Edwin Olds, and an umpire, M. Henri Fromageot, of France. Under the treaty, the claims to be submitted were included in a schedule attached to and forming part of the treaty. This provision, it is observed, is to be inoperative. The treaty is an experiment; it is limited to one year, with power on behalf of either party to propose amendments three months before its expiration, and the treaty itself is to expire with the year unless the amendments proposed have been agreed upon. In the absence of this eventuality, and in the absence of a notice to terminate it made three months before the end of the year in question, the treaty continues, saving the right to make amendments or to abrogate the treaty by notice given in any future year three months in advance of the year in question.

The rights of the two countries are safeguarded with the caution which becomes nations taking their treaties and obligations seriously, as appears from Article VI:

In the event that either of the high contracting parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each high contracting party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

As long as the treaty is in force and is executed in good faith by both of the contracting parties, the rights secured by the treaty are vested in the United States; but upon its abrogation, the jurisdiction of the United States, so far as British vessels are concerned, stops at a line three miles seaward from low-water mark of these United States and their possessions. The treaty, in effect, incorporates the views of Mr. Justice Sutherland, thus expressed in his dissenting opinion in *The Cunard Steamship Company; (Ltd.) et al. v. Andrew W. Mellon, Secretary of the Treasury, et al.*, 262 United States, 100, 132-133 (1923), this JOURNAL, Vol. 17, p. 563, at p. 571:

I agree with the judgment of the court in so far as it affects domestic ships, but I am unable to accept the view that the Eighteenth Amendment applies to foreign ships coming into our ports under the circumstances here disclosed.

It would serve no useful purpose to give my reasons at any length for this conclusion. I therefore state them very generally and briefly.

The general rule of international law is that a foreign ship is so far identified with the country to which it belongs that its internal affairs, whose effect is confined to the ship, ordinarily are not subjected to interference at the hands of another State in whose ports it is tempora-

rily present 2 Moore, *Int. Law Dig.*, p. 292; *United States v. Rodgers*, 150 U. S. 249, 260; *Wildenhus's Case*, 120 U. S. 1, 12; and, as said by Chief Justice Marshall, in *Murray v. Schooner Charming Betsy*, 2 Cranch, 64, 118:

" . . . an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. . . . "

That the Government has full power under the Volstead Act to prevent the landing or transshipment of any such liquors or their use in our ports is not doubted, and therefore it may provide for such assurances and safeguards as it may deem necessary to those ends. Nor do I doubt the power of Congress to do all that the court now holds has been done by that Act, but such power exists not under the Eighteenth Amendment, to whose provisions the Act is confined, but by virtue of other provisions of the Constitution, which Congress here has not attempted to exercise. With great deference to the contrary conclusion of the court, due regard for the principles of international comity, which exist between friendly nations, in my opinion, forbids the construction of the Eighteenth Amendment and of the Act which the present decision advances.

JAMES BROWN SCOTT.

STATUS OF THE INHABITANTS OF MANDATED TERRITORY

Precedents are gradually establishing the precise position of the mandated territories in the system of international law. Recent decisions seem to make it clear (1) that the mandated territories are not under the sovereignty of the mandatories, and (2) that the inhabitants of these territories are not nationals of the mandatories.

I

The first of these questions has arisen in connection with the claim of mandatories to enforce treason laws, to appropriate vacant lands and to apply treaties in mandated areas. During the summer of 1922 South Africa was confronted by a serious rebellion of the Bondelzwarts in its mandated territory of Southwest Africa. After suppression of the rebellion,¹ one of its leaders, Jacobus Christian, was convicted of high treason and sentenced to five years' imprisonment by the local circuit court.² Upon appeal to the Supreme Court of the Union of South Africa the indictment was sustained.³

¹ The methods employed gave rise to severe criticism in the Assembly (Levermore, *League of Nations Year Book*, 1923, Vol. 3, p. 276), and to a lengthy investigation by the Permanent Mandates Commission, as a result of which the commission drew attention to the failure of the mandatory itself to make a "complete and authoritative inquiry" (Permanent Mandates Commission, Minutes, 3rd sess., 1923, p. 291) and to the harshness of the methods of suppression and the insufficiency of the remedial measures. (*Ibid.*, p. 294.) The commission likewise deplored the unfortunate relations which the report disclosed between the white population and a large proportion of the natives of the mandated territory. (*Ibid.*, p. 325.)

² Permanent Mandates Commission, Minutes, 3rd sess., 1923, p. 295.

³ *Christian v. Rex*, Supreme Court of South Africa, *Cape Times*, Dec. 1, 1923.

In answering the argument that "high treason—the *hoogverraad* or *perduello* of the Roman Dutch law—can only be committed against a sovereign Power which acknowledges no superior, and the mandatory is not such a power," the court made a detailed investigation of the authority of the Union of South Africa in the mandated territory. It reached "the definite conclusion" that "the Government of Southwest Africa is not possessed of *majestas* in the full sense of that term; in other words, it is not a sovereign and independent state." Furthermore, though by Article 119 of the Treaty of Versailles, "Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions," she did not cede these territories to all or any one of these Powers.⁴ "The animus essential to a legal cession was not present on either side. For the signatories must have intended that such possessions should be dealt with as provided by Part I (the League of Nations Covenant) of the treaty and they were placed at the disposal of the Principal Powers merely that the latter might take all necessary steps for their administration on a mandatory basis. . . . The intention of the signatories seems to have been to place certain overseas possessions relinquished by Germany upon a basis new to international law and regulated primarily by Article 22 of the treaty."

The League of Nations, however, though sometimes referred to rhetorically as a "superstate" and "regarded in certain clauses of the treaty as possessing a distinct international *persona*," is in reality "an association of states which, while retaining their own sovereignty and status, have agreed with one another to pursue a certain line of conduct in international affairs as laid down in the Covenant and to cooperate in certain matters of general concern. It functions through an Assembly, a Council and a permanent Secretariat, but none of these have any compulsory power over the individual states. . . . It is not a state, it owns no territory, governs no subjects and is not endowed with the attribute of sovereignty."

Thus the court was unable to consider Southwest Africa as under the sovereignty of the mandatory, or of the Principal Allied and Associated Powers, or of the League. The powers of the various organs concerned in this "situation new to international law" could, therefore, only be discovered by reference to the terms of Article 22 of the Covenant and the mandate. These disclosed that, though the Government of Southwest Africa was limited externally by "some degree of supervisory authority" in the Council of the League, internally it was subject to no limitations except such as it had undertaken by agreement similar to treaty in accepting the mandate. Both Article 22 and the mandate recognized the mandatory of Southwest Africa as having "full power of administration and legislation" in that

⁴ In support of this distinction, the court noticed that in the genuine cessions of territory the successor was burdened with a part of the German pre-war debt (Art. 254) and Germany was given reparations credit for public property in the territory. (Art. 256.) This was not true of the territory put under mandate. (Arts. 220, 257.)

territory. Thus the Government of Southwest Africa exercising the authority of the Union of South Africa might be said to have internal sovereignty, and "*majestas* operating internally may by our law be sufficient to found a charge of high treason in spite of the fact that its external operation is considerably curtailed." The Union of South Africa itself as an independent signatory of the peace treaties and a member of the League of Nations had an international status "clearly consistent with the possession of *majestas* by its government in the capacity of mandatory." Consequently "the allegation in the indictment that the accused owed allegiance to His Majesty King George the Fifth in his Government of the Union of South Africa was not open to objection."⁵

A similar conclusion with regard to the mandatory's want of sovereignty was reached in an elaborate report by M. van Rees of the Permanent Mandates Commission on the system of state lands in B and C mandated territories.⁶ The report presented at the third session of the commission examines the opinions of writers both for⁷ and against⁸ the attribution of sovereignty to the mandatories and accepts the latter view. M. van Rees does not find it necessary for his purpose to decide whether sovereignty is vested in the League,⁹ or in the Principal Allied and Associated Powers,¹⁰ or elsewhere. He believes, however, that the mandatory may enjoy full "legislative, administrative and judicial power" without having sovereignty of the territory. In fact the old trading companies, such as the Dutch and the British East India companies, possessed analogous powers without the attributes of sovereignty. The terms of Article 22 of the Covenant and of the mandates show "that under the mandate system the mandatory state is merely the governor of the territory which does not belong to it." Thus articles of the Treaty of Versailles by which property and possessions of the German Empire or any German state "shall pass to the government exer-

⁵ An analogy may be noted to the power of the States of the United States to punish persons for treason against themselves though they lack sovereignty as understood by international law (Wharton, *Criminal Law*, sec. 1812), and of military governments to punish for "war treason" the inhabitants of occupied territory over which they have only temporary jurisdiction (*U. S. Rules of Warfare*, 1914, secs. 202, 203, 207; Oppenheim, *International Law*, 3rd ed., sec. 162).

⁶ Permanent Mandates Commission, Minutes, 3rd sess., 1923, annex 2, pp. 216-239.

⁷ M. R. E. Rolin, "*Les systemes des mandats coloniaux*," *Rev. de droit int. et de lég. comp.*, 1920, p. 329.

⁸ John H. Harris, "The Challenge of the Mandates," *Contemporary Review*, 1921; British League of Nations Union, *A plan for government by mandates in Africa*, 1921; M. von Kol, "Colonial Mandates and the League of Nations," *Preliminary Documents of the Twentieth Interparliamentary Union*, p. 76. See also Wright, "Sovereignty of the Mandates," this JOURNAL, 17: 695, Oct. 1923.

⁹ As argued by Schucking and Wehberg, *Die Satzung des Volkerbundes*, Berlin, 1921, p. 423. See also Wright, *op. cit.*, p. 697, and M. D'Andrade, Permanent Mandates Commission, Minutes, 1st sess., 1921, pp. 41-42.

¹⁰ See M. Rappard, Permanent Mandates Commission, Minutes, 2nd sess., p. 42; Wright, *op. cit.*, pp. 697, 699.

cising authority over such territories" (Art. 120) or "shall be transferred with the territories to the mandatory Powers in its capacity as such" (Art. 257) do not give the mandatory state a title to such property.¹¹ "The territory, property, possessions and rights referred to in the two articles do not belong to the mandatory state, but have merely been placed at its disposal; it has been granted their use in order that it may carry out its duties as governor with which it has been entrusted."¹² Although the Permanent Mandates Commission deferred final decision upon the character of public land tenure in the mandated territories, it questioned the right of South Africa to appropriate the property of the Southwest African railway "in full *dominium*,"¹³ and of France to treat public lands in Togoland and the Cameroons as "private domain of the state."¹⁴ The question, according to M. Rappard, Director of the Mandates Section of the Secretariat, would only have significance in the case of "a change of the mandatory Power." In such circumstances, if M. van Rees's theory were followed, "the territory as well as the attributes of the mandatory Power would pass to another Power."¹⁵

The mandatory's want of sovereignty over mandated territory was again indicated through the disclosure by representatives of some of the mandatories that states with which they had commercial treaties refused to give the benefit of these treaties to goods from mandated territory.¹⁶ The commission, while noting that mandatories were expressly required by the B mandates to apply "general international conventions" applicable to territory contiguous to the mandated territory, were of the opinion "that the man-

¹¹ *Supra*, note 4.

¹² Permanent Mandates Commission, Minutes, 3rd sess., p. 221. See also pp. 21, 162, 195.

¹³ *Ibid.*, pp. 107, 325.

¹⁴ *Ibid.*, p. 30.

¹⁵ *I.e.*, the former mandatory would not have any claim to continued title to or to compensation for public property left in the territory. (*Ibid.*, p. 30.) The A mandates expressly secure to some extent the financial rights of the mandatory in the territory in case of termination of the mandate. (Keith, *Journ. of Comp. Leg.*, 3rd ser. 4: 80; Wright, *op. cit.*, 17: 700.) The distinction can be illustrated by considering the Shantung articles of the Treaty of Versailles. By these articles Germany ceded to Japan political privileges, concessions, public archives and "movable and immovable property owned by the German state in the territory of Kiau Chau." Germany had acquired these rights as a result of the lease agreement with China of 1898. Had her rights in the leased territory of Shantung been analogous to the mandatory's rights in mandated territory under M. van Rees's theory, it would seem that she could not cede them to Japan, because upon the termination of her administration of Kiau Chau they would automatically revert to China. China in fact made this contention. (Chinese representative Koo at Washington Conference, December 3, 1921, 67th Cong., 2d sess., Sen. Doc. 126, p. 539; Quigley, "Legal Phases of the Shantung Question," *Minn. Law Rev.*, April, 1922, p. 383.)

¹⁶ Great Britain was unable to obtain most-favored-nation treatment for goods from Tanganyika (Permanent Mandates Commission, Minutes, 3rd sess., 1923, p. 27) and South Africa was unable to obtain such treatment for goods from Southwest Africa. (*Ibid.*, p. 110.)

dated territory, although administered as an integral part of the mandatory (as in the case of C mandates), constitutes a distinct entity, from the international point of view, and that accordingly international treaties signed by the mandatory state do not apply *de jure* to territory under C (or B) mandates."¹⁷ The same principle would apply *a fortiori* to A mandated territory. In order to prevent discrimination against the mandated territories, the commission urged the mandatories and members of the League to make special agreements reciprocally extending such conventions to the mandated areas.¹⁸

II

The status of the inhabitants of mandated territories has occupied much attention in the League, with the final conclusion that such inhabitants, whether native or of European origin, do not automatically become nationals of the mandatory; that they can not be compelled to become nationals of the mandatory, though by the Treaty of Versailles (Art. 122) the mandatories of former German territory might expel or fix conditions of residence of "German subjects of European origin," and that the mandatory may provide for the individual and voluntary naturalization of any inhabitant.

The status of these persons has not been defined, though the term "administered or protected persons under mandate" has been suggested.¹⁹ However, the terms of the Treaty of Versailles, the Covenant and the mandates, make it clear that persons under B and C mandates can not be drafted for military service outside the mandated territory, except for necessary defence;²⁰ that they are entitled to freedom of conscience and religion and to protection from slave, arms and liquor trade;²¹ that they have a right to petition the League of Nations for redress of grievances,²² and that they can enjoy the diplomatic protection of the mandatory while abroad.²³ The Su-

¹⁷ Permanent Mandates Commission, Minutes, 3rd sess., 1923, p. 310. With this ruling, countries like the United States, which, because of non-membership in the League, are not entitled to equal treatment in the mandated areas by the terms of the Covenant and the mandates, can not be sure of such treatment through most-favored-nation clauses with the mandatory unless the latter expressly apply to the mandated areas. The United States has in fact endeavored to conclude such special agreements. See statement of Secretary of State Hughes, *Foreign Affairs*, Supp., Vol. 2, No. 2, Feb. 1924, p. xix.)

¹⁸ Permanent Mandates Commission, Minutes, 3rd sess., p. 310. See also pp. 90, 171, 176, 194. This recommendation has been endorsed by the Council. (*League of Nations Monthly Summary*, 3: 306.) For reference to the interest of the United States in equality of economic opportunity in the mandated areas see Permanent Mandates Commission, Minutes, 1st sess., 1921, p. 21; 3rd sess., 1923, p. 27.

¹⁹ *Ibid.*, 2nd sess., pp. 20, 66, 68; *League of Nations Official Journal*, 4: 568.

²⁰ Permanent Mandates Commission, Minutes, 1st sess., 1921, p. 24; 3rd sess., 1923, pp. 26, 157, 196, 311, 319.

²¹ *Ibid.*, report on 2nd sess., 1922, p. 6; Minutes, 3rd sess., 1923, pp. 256-279, 309, 311.

²² Permanent Mandates Commission, Minutes, 2nd sess., 1922, pp. 15, 36, 76; *League of Nations Official Journal*, 3: 604, 606; 4: 200, 211, 298; Wright, this JOURNAL, 17: 702.

²³ Treaty of Versailles, Art. 127; *League of Nations Official Journal*, 3: 594, 608; 4: 658;

preme Court of South Africa has held that inhabitants of C mandated territory, at least, owe a certain allegiance to the mandatory which may render them liable for treason.²⁴ Though nationality is often spoken of as "the reciprocal relation of allegiance and protection on the part of the person and the state,"²⁵ states often extend diplomatic protection to persons not nationals,²⁶ and persons not nationals may be prosecuted for treason.²⁷ Thus there is no contradiction between these privileges and liabilities of the inhabitant of mandated territory and his want of mandatory nationality.²⁸

The question of the status of inhabitants of the mandated areas arose even before the mandates were confirmed. Sir John Salmond, Solicitor General of New Zealand, gave his government an opinion on September 30, 1919, that inhabitants of western Samoa had not acquired New Zealand nationality by the assignment of the mandate; that under New Zealand law they could not acquire it while resident in Samoa, and that under British imperial law it was doubtful whether New Zealand could provide for their naturalization.²⁹ On September 18, 1920, General Smuts, Prime Minister of South Africa, told the German inhabitants of Southwest Africa that "in effect, the relations between the Southwest Protectorate and the Union amount to annexation in all but name"; that the mandatory provisions were designed to offer protection to the "indigenous population"; that the inhabitants of German origin who had not been expelled as they might have been under the treaty (Art. 122) could not look to Germany for protection; that they were not nationals of South Africa; that the Union was anxious to have them become citizens, but would bring no pressure to bear.³⁰ Later General Smuts expressed the conviction that the only solution would be to make these Germans, Union Citizens by general act, giving an opportunity of individual refusal.³¹ In both of these instances the question had arisen Permanent Mandates Commission, Minutes, 2nd sess., 1922, p. 19, 67; 3rd sess., 1923, p. 310.

²⁴ *Supra*, note 3.

²⁵ Wilson and Tucker, *International Law*, 8th ed., p. 131; Hyde, *International Law*, 1: 610; *Luria v. U. S.*, 231 U. S. 9, 1913; Tunis case, Permanent Court of International Justice, *Acts and Documents*, Vol. 2, p. 116.

²⁶ As to inhabitants of protectorates, see opinion of Sir John Salmond of New Zealand, May 11, 1920, Permanent Mandates Commission, Minutes, 2nd sess., p. 69. For other classes of non-nationals who have been given protection, see Borchard, *Diplomatic Protection of Citizens Abroad*, pp. 463-478, 568-574.

²⁷ In the United States treason laws may be applied against domiciled aliens. (Pomeroy, *Constitutional Law*, sec. 432.)

²⁸ See resolution II, *infra*, note 43.

²⁹ Permanent Mandates Commission, Minutes, 2nd sess., 1922, p. 67. See also opinion of Sir John Salmond, May 11, 1920, including statement that the Samoans had the right under the peace treaty "to become incorporated in the British Empire if they so desired." The Permanent Mandates Commission put itself on record as unable to understand this. *Ibid.*, p. 68.

³⁰ *Ibid.*, 2nd sess., 1922, p. 92.

³¹ Letter of July 4, 1922, to M. Rappard, *ibid.*, 2nd sess., p. 91.

with regard to persons of German origin who had not been repatriated, and in neither case did the mandatory evince any intention of considering that such persons had automatically become nationals of the mandatory.

During the first session of the Permanent Mandates Commission, on October 7, 1921, while the Southwest African report was under discussion, M. Rappard, Director of the Mandates Section of the Secretariat, drew the attention of the commission to the difference of opinion between those who held that the mandatory could impose its nationality upon inhabitants of the mandated territory and those who held that the mandatory's nationality could only be acquired by voluntary naturalization; remarking that "the former view appeared to strengthen the argument of those who maintained that a C mandate amounted to disguised annexation." The members of the commission expressed very diverse opinions on the subject and it was decided to draw the Council's attention to the matter.³²

At its meeting on October 10, 1921, the Council, in accordance with this suggestion, appointed a subcommittee of the Permanent Mandates Commission to examine the question.³³ This subcommittee obtained the views of the mandatories, in most cases by personal interviews, disclosing a considerable divergence of opinion.³⁴ M. Matsuda, of Japan, thought it "contrary to the spirit of Article 22 of the Covenant to assimilate the native inhabitants of mandated territory to the subjects of the mandatory Power. On the other hand, having in mind the interests of these peoples, they should be accorded every advantage granted to subjects of the mandatory Power." Consequently, "they occupied a new position in international law and ought to receive a new legal status." Inhabitants other than native should, however, preserve their original nationality, in his opinion.³⁵ Representatives of New Zealand and Australia took a similar position. They regarded the natives as "British protected persons" and contemplated naturalization of the Germans, if difficulties of the kind suggested by Sir John Salmond could be avoided by British imperial legislation.³⁶ The representative of South Africa, Sir Edgar Walton, pointed out that Southwest Africa was the only mandated territory with a large German population, and experience had proved that it was impossible to govern unless these Germans were naturalized, in which case they could participate in the government on equal terms with the resident South Africans and could also be represented in the Union parliament. South Africa, therefore, hoped to obtain British and League consent to the naturalization of these people. The subcommittee raised the question whether this procedure would not "risk destroying a distinction essential for the maintenance of the system of mandates."³⁷ The British

³² Permanent Mandates Commission, Minutes, 1st sess., 1921, p. 41.

³³ *Ibid.*, 2nd sess., 1922, p. 85. Minutes of 14th session of the Council, p. 125.

³⁴ Report, *League of Nations Official Journal*, 3: 589-608.

³⁵ *Ibid.*, 3: 592.

³⁶ *Ibid.*, 3: 592.

³⁷ *Ibid.*, 3: 593, 598.

and French representatives considered the native inhabitants of mandated territory as protected persons whose naturalization they did not contemplate. Germans had all been repatriated in the territories under their mandate.³⁸ The Belgian colonial ministers who were interviewed, at first developed an elaborate argument for extending Belgian nationality to the native inhabitants as a privilege necessary to assure them the protection contemplated by the treaty and the mandate. After M. Rappard had drawn their attention to the limitation this might impose upon the right of native inhabitants to petition the League and of the League to supervise their protection as required by the Covenant, the Belgians presented a written opinion similar to that given by the British and French representatives.³⁹ At its meeting, May 12, 1922, the Council considered this report and requested the Permanent Mandates Commission to submit definite proposals on the basis of it.⁴⁰

The Permanent Mandates Commission considered the question at its second session, August 1 to 11, 1922. The special situation in Southwest Africa was considered, but the commission was unable to reconcile collective naturalization with the separate status of mandatories contemplated by the Covenant.⁴¹ Consequently, it drafted a resolution proposing that native inhabitants be given a distinct status, that the mandatory define this status, and that the mandatory be entitled to provide by law for "the individual and purely voluntary naturalization of any inhabitants of the mandated area."⁴² These resolutions were accepted with slight modifications by the Council in its meeting of April 23, 1923, as follows:⁴³

The Council of the League of Nations,

Having considered the report of the Permanent Mandates Commission on the national status of the inhabitants of territories under B and C mandates.

In accordance with the principles laid down in Article 22 of the Covenant:

Resolves as follows:

(1) The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the Mandatory Power and cannot be identified therewith by any process having general application.

(2) The native inhabitants of a mandated territory are not invested

³⁸ Report, *League of Nations Official Journal*, 3: 593-595.

³⁹ *Ibid.*, 3: 594, 600-607.

⁴⁰ *Ibid.*, 3: 524.

⁴¹ Permanent Mandates Commission, Minutes, 2nd sess., 1922, pp. 16-19, 86. The commission also reached the conclusion that, under general principles of international law, Germans in the mandated areas did not automatically lose their German nationality. *Ibid.*, p. 17.

⁴² *Ibid.*, 2nd sess., 1922, pp. 19, 65-68, 73; *League of Nations Official Journal*, 4: 659.

⁴³ *League of Nations Official Journal*, 1923, 4: 604. The distinct status which the United States accords the nationals of the Philippines was referred to as a precedent for the proposed status of inhabitants in the mandated territories. *Ibid.*, 4: 569.

with the nationality of the Mandatory Power by reason of the protection extended to them.

(3) It is not inconsistent with (1) and (2) above that individual inhabitants of the mandated territory should voluntarily obtain naturalization from the Mandatory Power in accordance with arrangements which it is open to such Power to make, with this object under its own law.

(4) It is desirable that native inhabitants who receive the protection of the Mandatory Power should in each case be designated by some form of descriptive title which will specify their status under the mandate.

While vote on this resolution was still pending, an extended debate took place on the question of recognizing the right of South Africa to provide for collective naturalization of the persons of German origin in her mandated territory.⁴⁴ The South African delegate called attention to Article 122 of the Treaty of Versailles by which a mandatory which did not repatriate German subjects of European origin might provide conditions upon which they "shall or shall not be allowed to reside, hold property, trade or exercise a profession" in the mandated area, and proposed that South Africa be authorized to confer British nationality on the Germans of Southwest Africa, with the proviso that every such inhabitant might decline, and those who did so might remain and would not be disturbed or molested in any way.⁴⁵ The Council then voted, with M. Branting of Sweden abstaining.⁴⁶

The Council of the League of Nations, taking into consideration the special case presented to it and the fact that only the inhabitants of Southwest Africa alluded to in Article 122 of the Treaty of Versailles are concerned, takes note of the declaration made by the representative of South Africa and sees no objection to the proposed action.

There has been no decision with reference to the status of inhabitants of A mandated territories, but inasmuch as these territories by Article 22 are provisionally recognized as independent nations, it seems clear that their inhabitants can not be assimilated to nationals of the mandatory.

The League's decisions with reference to the status of territory and inhabitants under mandate have been negative in character. League organs, as well as the South African court, have insisted that the mandatory is not sovereign, but have wisely avoided giving a final opinion as to the exact location of authority. It may be noticed, however, that in each of the controversies discussed, with the exception of that over the applicability of treason laws in Southwest Africa, the mandatory has recognized⁴⁷ and the

⁴⁴ *League of Nations Official Journal*, 1923, 4: 568-572.

⁴⁵ *Ibid.*, 4: 659.

⁴⁶ *Ibid.*, 4: 603.

⁴⁷ See for instance, statement of Sir Edgar Walton, representative of South Africa before the subcommittee on national status: "The Union of South Africa had not yet taken any decision as to the nationality of these inhabitants, but it would be extremely grateful to the Council of the League of Nations if it would authorize the government to offer them British nationality." *League of Nations Official Journal*, 3: 593, 598.

League Council has insisted that decision upon these exercises of sovereign powers can only be made by the mandatory with consent of the League Council. These cases thus seem to support the present writer's suggestion that "there will be a close approach to truth in ascribing sovereignty of mandated territories to the mandatory acting with the consent of the Council of the League."⁴⁸ It appears that these two acting together can, in fact, determine the status of either inhabitants or territory of the mandated areas.

QUINCY WRIGHT.

THE SETTLEMENT OF OUTSTANDING CLAIMS BETWEEN MEXICO AND THE
UNITED STATES

On September 8, 1923, a Convention for the Settlement of General Claims between Mexico and the United States was signed at Washington on behalf of the United States by Charles Evans Hughes, Secretary of State; Charles Beecher Warren, former Ambassador of the United States to Japan, and John Barton Payne, former Secretary of the Interior; and on behalf of Mexico by Manuel C. Téllez, Chargé d'Affaires ad interim of Mexico at Washington. The ratification of the treaty was advised by the Senate on January 23, 1924; ratified by the President of the United States on February 4, 1924; ratified by Mexico on February 16, 1924; ratifications exchanged at Washington on March 1, 1924, and proclaimed on March 3, 1924. The convention, therefore, is a law both of the United States and of Mexico, the origin, the source and the measure of the general claims of the United States against the sorely tried Republic of Mexico.

The two countries had in mind a settlement of all outstanding claims, and as a part of the transaction a Special Claims Convention was negotiated for the settlement of claims of American citizens arising from revolutionary acts in Mexico from November 20, 1910, to May 31, 1920. This convention was signed in the City of Mexico on September 10, 1923, and, going through the various stages required by the laws of both, was proclaimed as law by the President of the United States on February 23, 1924. It is, therefore, the law of the two Republics, and, like the general convention, it is the source and measure of the special claims for which it was negotiated, which the Government of the United States has by its terms the right to present against the Government of Mexico, and in appropriate cases to receive compensation. In this case the situation was reversed. George F. Summerlin, Chargé d'Affaires ad interim of the United States, acted on behalf of his country, and Alberto J. Pani, the Mexican Secretary of State for Foreign Affairs, signed on behalf of his country. Reciprocity was observed, in that the General Claims Convention was signed in Washington, the official residence of the Secretary of State of the United States, and the Special

⁴⁸ This JOURNAL, 17: 698.

Claims Convention was signed in the City of Mexico, the official residence of the Secretary of State for Foreign Affairs of Mexico.

The scope of the General Claims Convention is, as its title indicates, broader than the other. On July 4, 1868, a claims convention was signed for the settlement of general claims of the two governments then outstanding. The purpose of the present convention is to submit to a commission claims of a general nature, arising since that period, so that with these claims settled and out of the way, there will be nothing of this kind outstanding to prejudice the friendly relations of the two Republics. It would be difficult to give a summary of the claims to be submitted, other than by the text of the article submitting them, which is in itself a summary. It therefore follows:

- All claims (except those arising from acts incident to the recent revolutions) against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America by citizens of Mexico, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in which such citizens have or have had a substantial and *bona fide* interest, provided an allotment to the claimant by the corporation, company, association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the Commission hereinafter referred to; and all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice, and which claims have been presented to either Government for its interposition with the other since the signing of the Claims Convention concluded between the two countries July 4, 1868, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity.

If the matter stood here, it might seem that only claims arising before the signature of the convention could be submitted. This is, however, not so.

Leaving for the moment the composition of the commission, in order to determine the claims to be submitted, it is provided generally in the 6th Article that the claims shall be filed within one year of the first meeting of the commission; that all claims submitted shall be decided within three years of the first meeting of the commission, and that any particular claim presented shall be decided within six months after its presentation. This article, however, relates to claims already in being. Article 7 looks to the future, and therefore the contracting parties agree that either government may present a claim, arising after the signature of the convention at any time before the expiration of the three years during which the commission shall be in existence, and they further agree to prolong, if need be, the

duration of the commission in order that any and all such claims presented within this period may be decided.

The commission is to be composed of three members: one appointed by Mexico, one by the United States, and upon the failure of the two governments to agree upon the third, who shall preside over the commission, he is to be appointed by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague, in accordance with Article XLIX of the Pacific Settlement Convention of 1907. This is to be the method of appointing the third member of the commission in case of disagreement of the two contracting governments, and it calls to notice in an apt and pointed way the existence of the Pacific Settlement Convention, creating the so-called Permanent Court of Arbitration and organizing the diplomatic corps, accredited to The Hague, into an administrative council for the supervision of the Court of Arbitration. The Pacific Settlement Convention of the First Conference was revised and enlarged by the Second Hague Conference, meeting in 1907. Therefore, in this apparently simple way, the two countries, neither of which is a member of the League of Nations, point to the Hague, which appears to many people of the day to be a *terra incognita*.

The commissioners are to meet in Washington six months after the exchange of ratifications of the convention, and each commissioner is to "make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of international law, justice and equity, all claims presented for decision." When, however, the commission is organized it is empowered to meet, either in Mexico or the United States, subject of course to the approval of the contracting parties.

It is encouraging to see that the recent claims convention is in accordance with the first, which these United States ever concluded. In the Jay Treaty of November 19, 1794, the outstanding claims were to be decided "according to the merits of the several cases, and of justice, equity and the law of nations." There should be continuity in matters of justice. There is in this case at least.

There is, however, a novel provision connected with the jurisdiction of the commission which, it is to be hoped, will meet with general approval, for it would seem to settle a difficulty of no mean order in a spirit of goodwill and in the interest of justice. Secretary Hughes said, on opening the Armament Conference in Washington on the 12th day of November, 1921, that the way to peace is the will to peace. He has carried into effect his precept, and fortunately the Mexican Government has confessed its faith in the will to peace as the way to peace in Article 5, which follows without comment or explanation, as it needs none:

The high contracting parties, being desirous of effecting an equitable settlement of the claims of their respective citizens thereby affording

them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

The commission must needs have rules, and, mindful of the principle of continuity, the convention provides as a standard, subject of course to modification, the rules of procedure of the Mixed Claims Commission under the convention between the two Governments of July 4, 1868. This is again a happy provision. It bridges the chasm between the two conventions, the latter taking up, as it were, where the former left off, adopting the same rules of procedure.

There is another novel provision in Article 9, to the effect that the commission shall award restitution of the property in question, if such action seems to be required by international law, justice and equity. In this case the government, taxed with restitution, is to restore the property, or if it prefers not to do so, the amount of compensation is to be fixed by the commission.

Finally, there is the usual barring clause, stated in a somewhat elaborate and unusual way. It is contained in the 8th Article and follows in full:

The high contracting parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications or the present Convention (except as to claims arising from revolutionary disturbances and referred to in the preamble hereof). And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission shall from and after the conclusion of the proceedings of the Commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

The Special Claims Convention has many points of similarity with the general convention, whose chief provisions have been mentioned. The commission is to consist of three members, appointed in the same manner (Article 1). In the interest of equity, the exhaustion of legal remedies is renounced (Article 6). The procedure, in so far as applicable, is to be that of the claims convention of July 4, 1868 (Article 4). As the labors of the commission for the adjustment of special claims are likely to be exacting, claims may be filed within two years of its meeting, and all claims are to be decided within five years, and each claim within six months of its presentation (Article 7). The barring clause also makes its appearance (Article 8). The special commission is, however, to be located in Mexico, to the convenience of all parties, within six months after the exchange of ratifications (Article 2).

As is to be expected, there are some important differences between the two conventions, otherwise a single one would have sufficed. In the oath to be subscribed international law is omitted, and the decision of each claim is to be "in accordance with the principles of justice and equity." The reason for this omission is stated: The Mexican Government "*ex gratia* feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained and was due to any of the causes enumerated in Article III hereof."

Article 3, thus referred to, follows:

The claims which the Commission shall examine and decide are those which arose during the revolutions and disturbed conditions which existed in Mexico covering the period from November 20, 1910, to May 31, 1920, inclusive, and were due to any act by the following forces;

- (1) By forces of a Government *de jure* or *de facto*.
- (2) By revolutionary forces as a result of the triumph of whose cause governments *de facto* or *de jure* have been established, or by revolutionary forces opposed to them.
- (3) By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government *de jure* established itself as a result of a particular revolution.
- (4) By federal forces that were disbanded, and
- (5) By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions (2), (3) and (4) above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars.

The claims to be submitted are those of citizens of the United States, arising within the specified period, "whether corporations, companies, associations, partnerships or individuals," and the actual legal or equitable interest of American citizens in each organization, is to be considered and compensation in appropriate circumstances awarded.

There is an identical provision in each of the conventions, to the effect that "the language in which the proceedings shall be conducted and recorded shall be Spanish or English." This may seem to be a small matter, but it is encouraging, as are so many provisions of the convention under consideration, to observe that the contracting parties are broad-minded in the question of language and permit the use of one or the other, as convenience dictates. The question of language to be used in international intercourse is one of convenience, and, rightly viewed, neither involves a renunciation of pre-eminence or superiority on the part of any Power. Nations must be on speaking terms. They should thus use in their intercourse on special and general occasions the language which is convenient to the nations at large. Precedents in this respect are so rare that it deserves more than a passing word of commendation when it exists.

This modest comment will wholly fail of its purpose if it does not make clear that we are dealing with two conventions, incorporating the experience of the past with that new diplomacy based upon the will to peace as the way to peace, and as a prerequisite even to the will, mutual respect on the part of the contracting nations for one another.

JAMES BROWN SCOTT.

A NOTE ON EXCHANGE V. M'FADDON

In a classroom discussion of *Exchange v. M'Faddon* a student admitting the logic and cogency of Marshall's classic opinion objected that the result was not equitable. The Rambouillet Decree, he said, was contrary to international law, and certainly was of no validity within the territorial jurisdiction of the United States, and that M'Faddon and others were in a strange situation when a United States court failed to return to them property which had been illegally seized, and the title to which had never been divested under their country's laws. The objection gave opportunity for drawing attention to the legal principle that by the Rambouillet Decree and the consequent seizure of the schooner *Exchange* rights in international law in favor of the United States were invaded; that M'Faddon and his partner were not subjects of rights in international law but objects of them. The student continued to insist upon the essential lack of equity in such a situation, and fortunately in this case the record has been preserved which serves to show that ultimately justice was done to the owners of the schooner *Exchange*. Under the treaty with France of 1831 French spoliation claims including those under the Rambouillet Decree were presented, principal and interest amounting to \$51,834,170.15. Those recognized as *prima facie* falling within the treaty amounted to \$41,640,838.35. The total amount awarded was \$9,352,193.47. The amount paid by France was \$5,558,108.07, allowing dividends equal to 59.86% upon the various claims according to the award. Claim No. 371 made by Robert Barry, trustee of Eliza, Antoinette, and John M'Faddon, and Richard Caton, assignee of Gretham and Devereaux, each claiming a one-half interest in the schooner *Exchange*, Dye, master, seized December, 1809, amounted to \$54,566.81. Barry and Caton were each allowed \$19,501.47. A record of these various transactions may be found in *Sen. Ex. Doc. No. 417*, 23d Cong., 1st sess.; *Sen. Ex. Doc. No. 204*, 24th Cong., 1st sess.; and *H. Ex. Doc. No. 117*, 24th Cong., 1st sess. These sums were paid to and receipted by Barry and Caton by treasury warrant as shown in *Sen. Ex. Doc. No. 74*, 49th Cong., 1st sess., p. 64. Perhaps this information may be of use to other teachers of international law who have students similarly sensitive to the equities lurking in this famous case.

J. S. REEVES.

THE PAN-AMERICAN SCIENTIFIC CONGRESS

The Second Pan-American Scientific Congress met in the City of Washington on December 27, 1915, and adjourned on January 8, 1916. It is to have a successor. The third of the scientific congresses will meet in the City of Lima on the 16th day of November, 1924. It was decided at the second congress that the third should meet at Lima, and it was anticipated that it would be within a period of five years from the date of adjournment. The continuance of the war, and the confusion of the international situation subsequent to and growing out of the war, have had their effects in the Americas. Finally, however, the obstacles standing in the way of a third congress have been overcome, and the official call has been issued by the Government of Peru. A circular signed by M. V. Villarán, as President, and José P. Bravo, as Secretary General of the Organization Committee, has been sent out in order to obtain at Lima, under the auspices of the congress, the presence of adequate representatives in all branches of science in the Western Continent. One has appropriately been received by the President of the American Society of International Law, requesting its cooperation and the appointment of official delegates to attend and to participate in the labors of the Third Pan American Scientific Congress.

In support of the statement that science in all its branches is to be represented, a brief quotation is made from the invitation to the American Society of International Law:

The Congress will comprise the nine Sections hereinbelow mentioned, the Presidents whereof have been appointed.

1.—Anthropology, History and related Sciences—President, Dr. Felipe de Osma, President of the Historical Institute of Peru.

2.—Physics, Mathematics and related Sciences—President, Rear Admiral M. Melitón Carbajal, President of the Geographical Society of Lima.

3.—Mining, Metallurgy, Economic Geology and Applied Chemistry—President, Engineer José Balta, Professor of Economic Geology at the Lima School of Engineering.

4.—Engineering President, Engineer Darío Valdizán, Dean of Peruvian Engineers.

5.—Medicine and Sanitation—President, Dr. Guillermo Gastañeta, Dean of the Faculty of Medicine.

6.—Biology, Agriculture and related Sciences—President, Dr. Wenceslao F. Molina, Dean of the Faculty of Sciences.

7.—Private, Public and International Law—President, Dr. Mariano Ignacio Prado y Ugarteche, Dean of the Faculty of Jurisprudence.

8.—Economics and Sociology—President, Dr. José Matías Manzanilla, Dean of the Faculty of Politics and Economics.

9.—Education—President, Dr. Alejandro O. Deustua, Dean of the Faculty of Letters and Director of the National Library.

The congress opening on the 16th of November is expected to last a fortnight, and in this congress covering all branches of science, it is expected

that the papers will cover at least its most important phases, and that they and their discussions will contribute in some measure to the advancement of science. It is of no small importance to bring the intellectual élite of the Americas together, who will discover their oneness notwithstanding differences of race, language and inherited traditions. "Scratch a Russian," they say, "and you will find a Tartar." Scratch an American of the North, of the Center and of the South, and you will find a human being. The great difficulty is to conserve the enthusiasm which is inevitably produced by these gatherings. The interval between them is considerable, and the influence of the second has spent itself long before the meeting of the third, just as the influence of the first had spent itself before the meeting of the second congress. The desideratum is that the connection between the congresses be preserved; that some machinery be devised which will keep in contact with the scientists during the intervals between the congresses, and that effect may be given, if only in part, to their recommendations, other than to have them fall still-born as has been the case with each of these international gatherings. Not the least important service of a third American Congress meeting at Lima would be the discovery of some means whereby the scientists of the Western Continent should keep in session, as it were, after their adjournment, and under direction continue their labors. The difficulty is great, but the greater the difficulty, the greater the need of meeting it.

It is to be hoped that many Americans of the North will find it possible to attend the congress, and take part in its proceedings. The meeting is to be held in the capital of Peru, and Peru has always made a special appeal to the Americans of the North. It is no discourtesy to the other American countries to say this, and any seeming discourtesy will be removed when the reason for it is given. That this should be so is a triumph of American literature. Many years ago, in 1847, a distinguished North American, one Prescott by name, published two volumes on the *Conquest of Peru*—a work speedily translated into Spanish, into French, and, indeed, into German and Dutch. The Americans of the North have been accustomed to read this masterpiece in their early youth, and the impression of the Incas of Peru, which they have received in their most impressionable period, remains with them all their lives, and Peru seems to them in no uncertain sense a land of dreams and of promise. The writer of this comment, if indeed it merits this title, has felt their charm, and he looks forward to the congress at Lima, which he hopes to attend in person.

If we only had a Prescott for every American Republic!

JAMES BROWN SCOTT.

CURRENT NOTES

The Netherland-America Foundation, an organization composed of Americans of Dutch descent, of Hollanders residing in the United States, and of all those interested in furthering friendship between this country and the Netherlands, has announced the initiation of a Grotius Memorial Fund for the purpose of presenting a memorial window to the Nieuwe Kerk at Delft, Holland, where Grotius lies buried. The presentation will take place in 1925 in commemoration of the three hundredth anniversary of the publication of the *De Jure Belli ac Pacis* by the "Father of International Law." The suggestion has received the approval of the Dutch Government and is endorsed by Chief Justice Taft and other persons prominent in the American legal profession.

It is proposed to raise \$10,000 for the purpose from the American bench and bar, and it is desired that the gift be representative of the entire legal profession. The expenses of the collection and preservation of the fund will be borne by the Netherland-America Foundation, so that the full amount collected may go to the purpose for which it is given.

Among the officers of the Foundation are Mr. Edward W. Bok, President; Mr. William C. Redfield, Executive Vice-President, Mr. William Gorham Rice, Mr. Franklin D. Roosevelt, and Mr. W. van Doorn, Vice-Presidents.

Contributions may be sent to the office of the Netherland-America Foundation, 17 East 42nd Street, New York City.

The Thirty-third Conference of the International Law Association will open on Monday, September 8, 1924, at Stockholm. The subjects for discussion will include the proposed statute of a Permanent International Criminal Court and reports of the Committees on General Average, Foreign Judgments, Systems of Evidence, Codification, Nationality, Commercial Arbitration, Neutrality, and Aviation.

In the announcement of the meeting issued by the American branch of the Association it is stated that members of the American Bar Association planning to go to London will be able to attend the Stockholm conference and be back in the United States by about September 22 or 23.

Information regarding sailings, rates, passports, etc., may be obtained from Mr. Amos J. Peaslee, Honorary Secretary of the American Branch, 501 Fifth Avenue, New York City.

The JOURNAL takes pleasure in publishing the following announcement from the Law Faculty of Leiden University:

S. J. VISSER, L.L.D., a colonial judge, who died in 1919, bequeathed his fortune to Leiden University on the condition that the revenue should be utilized in order to promote the study of international public and private law; he especially stipulated that every three years a sum of at least 5000 Dutch guilders should be destined for an international prize-subject. Accordingly the Law Faculty of Leiden University invites competitors to give: A description of the private international law of one or more countries of Europe in the XVIth and XVIIth century. The author ought to use in the first place the judicial precedents and the particular customs and laws. He can choose the countries he likes.

The answers shall be typewritten in French or in Dutch and must arrive in the hands of the Dean of the Law Faculty of Leiden University before December 1, 1925; the manuscript shall bear a motto, that must be reproduced on a sealed envelope joined to the manuscript and containing both the name and the address of the author.

Prizes will be adjudged to an amount of 5000 Dutch guilders to those answers which, in the opinion of the Faculty, will deserve reward.

After the prizes being adjudged the Dean, in a session of the Faculty, will open the sealed envelopes corresponding to the answers to which prizes have been awarded, and will inform the authors about the Faculty's decision; the other envelopes will be burned during the same session.

ERRATUM

Letter to the Editor-in-Chief from Señor Don Cosme de la Torre, Feb. 20, 1924

While reading the bibliographic comment on my book *Actividades de la Liga de las Naciones*, which appeared in the issue of October, 1924, of THE AMERICAN JOURNAL OF INTERNATIONAL LAW, I noticed a mistake of a certain importance in the translation of one paragraph of the Introduction. The Spanish original reads (*Actividades*, pp. xxiv and xv):

" . . . Al mismo tiempo he querido ofrecer, a los internacionalistas y diplomáticos de otros países, un cuadro de conjunto de la Liga de las Naciones, y de sus empresas, que les permita comprobar cómo los hombres de raza española de la América contribuyen también con su esfuerzo, aunque el presente sea sencillo y pobre, a la divulgación de lo que etc. . . "

which has been translated as follows (JOURNAL, p. 827):

"At the same time I have wished to present to the gaze of international lawyers and diplomatists of other countries a picture of the League of Nations as a whole, together with its activities, which shall show them how the men of the Spanish race in America are also contributing, with their efforts, although at present they may be unimportant and of scant value, to spread the knowledge etc. . . "

As you see, what I consider "unimportant and of scant value" is my own effort to spread the knowledge, and not the efforts of the men of the Spanish race in America.

Were it possible to rectify this error in the next issue of the JOURNAL, I would be very thankful to you.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD NOVEMBER 16, 1923-FEBRUARY 15, 1924

(With reference to earlier events not previously noted.)

WITH REFERENCES

Abbreviations; *Adv. of peace*, Advocate of peace; *B. I. I. I.*, Bulletin de l'Institut Intermediaire International; *Bd. of trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cur. Hist.*, Current History (New York Times); *D. O.*, Diario oficial (Brazil); *E. G.*, Eidgenossische gesetzsammlung (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal Officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. Q. B.*, League of Nations, Quarterly Bulletin; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation (N. Y.)*; *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetzblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue international de la Croix-Rouge; *R. R.*, American Review of Reviews; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

September, 1923

- 4 COSTA RICA—SPAIN. Ratifications exchanged of trade marks convention signed Sept. 21, 1922. *Ga. de Madrid*, Dec. 22, 1923, p. 1339.
- 29 NICARAGUA—SPAIN. Customs convention renewed. *P. A. U.*, March, 1924, p. 309.

October, 1923

- 15 BELGIUM—GREAT BRITAIN. Ratifications exchanged of convention signed Aug. 8, 1923, extending to Belgian Congo and British Protectorates in Africa the existing extradition conventions. Text: *Lond. Ga.*, Jan. 22, 1924, p. 681. *G. B. Treaty series*, no. 1 (1924), *Cmd.* 2026. *Monit.*, Jan. 19-22, 1924.
- 26 TURKISH GOVERNMENT ADVISERS. Ismet Pasha on Oct. 26, 1923, requested President of Permanent Court of International Justice to draw up list of candidates from nationals of countries neutral during European War. The Court therefore instructed its Presi-

October, 1923

dent to ask highest legal authorities of Denmark, Spain, Norway, Netherlands, Sweden and Switzerland to communicate names of two qualified nationals before Jan. 1, 1924. *L. N. M. S.*, Nov., 1924, p. 268.

November, 1923

14 AUSTRIA—POLAND. Arbitration treaty signed at Warsaw. *Temps*, Nov. 16, 1923, p. 1.

15 to Dec. 9 COMMUNICATIONS AND TRANSIT. Four draft conventions and final act signed at second conference in Geneva: (1) International régime of railways. (2) Maritime ports (3) Transmission in transit of electric power. (4) Development of hydraulic power on watercourses, etc. *L. N. M. S.*, Dec., 1923, p. 296. Texts and signatures: *L. N. O. J.*, Jan., 1924.

15 CZECHOSLOVAKIA—GREECE. Exchanged ratifications of provisional commercial treaty of Jan. 10, 1923. *Commerce reports*, March 17, 1924, p. 727.

19 BULGARIA—RUMANIA. Convention relative to new frontiers signed. *Ga. de Prague*, Nov. 21, 1923, p. 1.

19 CZECHOSLOVAKIA—GREAT BRITAIN. Agreement signed regarding commercial travelers' samples. *Commerce Reports*, Dec. 31, 1923, p. 902.

19-28 ITALY—SPAIN. King and Queen of Spain visited Italy with view of establishing closer understanding with that government. They paid a visit to the Vatican. Nearly 500 years had elapsed since a ruler of Spain, in the person of Charles of Hapsburg, had paid homage in person to the Supreme Pontiff. *N. Y. Times*, Dec. 9, 1923, II, 6. *Cur. Hist.*, Jan., 1924, 19: 687.

20 RUMANIA—SOVIET RUSSIA. Statement signed concerning measures to prevent and settle conflicts arising on Dniester River. *Russian review*, Jan. 15, 1924, p. 201; *N. Y. Times*, Nov. 29, 1923, p. 11.

21 FREDERICK WILLIAM, *ex-crown prince of Germany*. Conference of Ambassadors agreed to notify Germany that the Crown Prince must observe promises concerning renunciation of throne. *Wash. Post*, Nov. 22, 1923, p. 1.

21 MILITARY CONTROL COMMISSION. Council of Ambassadors notified Germany that Control Commission would resume work and must be protected. Text: *Wash. Post*, Nov. 22, 1923, p. 1. *N. Y. Times*, Nov. 22, 1923, p. 1.

21 WILHELM II, *ex-emperor of Germany*. Council of Ambassadors agreed to notify German government that the return of former

November, 1923

Kaiser to Germany would not be tolerated. *Wash Post*, Nov. 22, 1923, p. 1.

- 22 GREEK REFUGEES SETTLEMENT SCHEME. Greek government deposited with League Secretariat ratification of protocol, signed Sept. 29, 1923, by Greek representative, and ratified on Oct. 13, 1923. *L. N. M. S.*, Dec. 15, 1923, p. 279.

- 23 TURKISH REPARATIONS. The United Kingdom, France, Italy and Japan signed convention relative to assessment and reparation of damage suffered in Turkey by Nationals of contracting powers. Text: *G. B. Treaty series*, no. 3 (1924), *Cmd.* 2028.

- 23 to Feb. 11, 1924 GERMAN REPARATIONS. On Nov. 23, the Reparation Commission began hearing representatives of German government on Germany's capacity to pay. Agreement signed between German mine owners and M. I. C. U. M. (French Factory and Mine Control Mission in Ruhr). *Times*, Nov. 24, 1923, p. 12. On Nov. 30, Germany repudiated recent agreements between Ruhr authorities and German industrialists in note to Reparation Commission. *N. Y. Times*, Dec. 1, 1923, p. 3. On Dec. 1, railway convention signed at Mainz by French and German representatives, containing concessions by France. *N. Y. Times*, Dec. 6, 1923, p. 3. On Dec. 16, France accepted with limitations, German proposals concerning conversations desired with France and Belgium on Rhineland and Ruhr questions. *Wash. Post*, Dec. 17, 1923, p. 1. On Dec. 29, semi-official *communiqué* issued in Berlin defining attitude of German government on Ruhr occupation costs. *Times*, Dec. 31, 1923, p. 9. On Jan. 11, Belgium and France sent replies to German note of Dec. 24, which demanded modifications in régime of occupation. Summary: *Times*, Jan. 12, 1924, p. 8. On Feb. 11, German reply to French and Belgian notes of Jan. 11 were delivered to respective governments. *Times*, Feb. 13, 1924, p. 13.

- 24 to Jan. 2, 1924 RUMANIA—SERBIA. Protocol of agreement relative to Serbo-Rumanian frontier in the Banat signed at Belgrade on Nov. 24, 1923, and ratified by Rumania on Jan. 2, 1924. *Ga. de Prague*, Dec. 12, 1923, and Jan. 3, 1924.

- 26 GREEK (RUSSIAN) CHURCH. Patriarch Tikhon proclaimed Christmas on Dec. 25. Supreme Council of Greek Church decided to adopt Gregorian instead of old Julian calendar. *N. Y. Times*, Nov. 27, 1923, p. 3.

- 26 GREAT BRITAIN—POLAND. Commercial agreement signed at Warsaw. *Commerce Reports*, Feb. 4, 1924, p. 330.

November, 1923

- 27 LIQUOR SMUGGLING. International Conference opened in Ottawa. *N. Y. Times*, Nov. 28, 1923, p. 15.

30 to Feb. 7, 1924 EXPERT COMMITTEES ON REPARATIONS. On Nov. 30, Reparation Commission voted to name two committees of experts to study (1) means of balancing German budget and stabilizing currency (2) evaluation of German wealth abroad and possibility of recovering it. *Wash. Post*, Dec. 1, 1923, p. 1. Text of *Communiqué: Europe*, Dec. 22, 1923, p. 1648. Announced from White House on Dec. 11 that President Coolidge favored acceptance by American experts of invitation from Reparation Commission to serve on these committees. *N. Y. Times*, Dec. 12, 1923, p. 1. Correspondence between French delegate on Reparation Commission and American observer, dated Dec. 5 and 12, and communication from German government dated Dec. 7, made public. *Press notice*, Dec. 12, 1923. *Adv. of peace*, Feb. 1924, p. 116. On Dec. 26, Reparation Commission nominated fifteen delegates to represent United States, England, France, Belgium and Italy on the two committees. Charles G. Dawes and Owen D. Young, American members. *N. Y. Times*, Dec. 27, 1923, p. 1. On Jan. 14, first committee began work in Paris. List of members, speeches: *Times*, Jan. 15, 1924, p. 12. *N. Y. Times*, Jan. 15, 1924, p. 1. *Communiqué* issued by Committee no. 1 on Jan. 22 announced plans for independent gold bank. On Feb. 7, an unofficial report of Committee no. 2 was issued in London. *Cur. Hist.*, March, 1924, p. 1072.

December, 1923

3-15 MEMEL QUESTION. On Dec. 3, Russian Foreign Office warned governments of Great Britain, France, Italy, Japan, Czechoslovakia, Belgium, Sweden, Spain, Uruguay and Brazil against any settlement in which Russia did not participate. *Russian review*, Jan. 15, 1924, p. 202. On Dec. 15, a commission, to solve difficulties between powers represented on the Conference of Ambassadors and Lithuania, was provided for by League of Nations Council. Norman H. Davis, president of Commission. *L. N. M. S.*, Dec, 1923 and Jan., 1924, pp. 308 and 13.

- 5 AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL. Closed sessions in London after rendering decisions in ten cases, *i.e.*, Claim no. 9 (Union Bridge Company); no. 27 (Cuba Submarine Telegraph Company); no. 30 (Robert E. Brown); no. 36 (Australasia and China Telegraph Company); no. 44 (Fiji Land Claims: Burt, Brower, Henry and Williams cases); no. 83 (Rio Grande).

December, 1923

Some of the cases were of more than 100 years' standing. *Wash. Post*, Dec. 6, 1923, p. 1. *N. Y. Times*, Dec. 6, 1923, p. 14.

- 6 PERMANENT COURT OF INTERNATIONAL JUSTICE. Gave eighth advisory opinion, this one relating to the Jaworzyna question (Polish-Czechoslovakia boundary dispute). It upheld decision of Conference of Ambassadors of July 28, 1920, awarding Jaworzyna to Czechoslovakia. *L. N. M. S.*, Dec., 1923, p. 290. *Adv. of peace*, Jan., 1924, p. 21.
- 8 GERMANY—UNITED STATES. Treaty of friendship, commerce and consular rights signed at Washington. *N. Y. Times*, Dec. 9, 1923, p. 2. Principal clauses: *N. Y. Times*, Nov. 27, 1923, p. 5.
- 10 ARMS TRAFFIC CONVENTION. Council of League sent letter to Secretary Hughes inviting America to send delegates to help draft convention. *N. Y. Times*, Dec. 11, 1923, p. 4.
- 10-22 LEAGUE OF NATIONS COUNCIL. Held 27th session in Paris, to consider Hungarian loan, control of arms traffic, Jaworzyna decision, Memel question, white slave trade, etc. *L. N. M. S.*, Dec., 1923.
- 11 GREAT BRITAIN—HUNGARY. Agreement signed at Paris modifying convention of Dec. 20, 1921, in so far as it relates to periodical instalments payable by Hungarian government. *G. B. Treaty series*, no. 9 (1924), *Cmd.* 2045.
- 13-14 NATIONAL IMMIGRATION CONFERENCE. Held in New York. *N. Y. Times*, Dec. 15, 1923, p. 28.
- 13 to Jan. 23, 1924 MEXICAN REVOLUTION. First engagement took place between Federal forces and soldiers of General Estrada on Dec. 13. On Dec. 29, Secretary Hughes announced that upon application of Obregon government, the United States had agreed to sell to it a limited supply of war materials. *N. Y. Times*, Jan. 1, 1924, p. 1. *Cur. Hist.*, Feb., 1924, 19: 720. On Jan. 7, President Coolidge issued proclamation declaring it to be unlawful to export arms or munitions to Mexico. *Press notice*, Jan. 7, 1924. On Jan. 16, State Department protested against decree of Jan. 12, issued by A. de la Huerta for blockade at port of Tampico to be established on Jan. 16. U. S. Cruiser *Richmond* ordered to proceed to Tampico. On Jan. 19, proposed blockade was postponed. *Press notice*, Jan. 21, 1924. On Jan. 17, Obregon government asked permission to move troops from Sonora through American territory to a point in Texas. State Department transmitted request to governors of Arizona, New Mexico and Texas, who agreed to proposal. *Press notice*, Jan. 17, 1924. *N. Y. Times*, Jan. 18 and 20, 1924, p. 1.

December, 1923

- 14 BELGIUM—FRANCE. Ratifications exchanged of Treaty of Assistance signed Nov. 30, 1921. Text: *J. O.*, Dec. 27, 1923, p. 12038.
- 14 FINLAND—GREAT BRITAIN. Agreement in regard to disposal of estates of deceased seamen signed at Helsingfors. *G. B. Treaty series*, no. 7 (1923), *Cmd.* 2042.
- 14-19 POLAND—SOVIET RUSSIA. By exchange of documents Soviet government recognized *de jure* by Poland. *Times*, Dec. 21, 1923, p. 9. *Cur. Hist.*, Feb., 1924, 19: 874.
- 14-20 ESTHONIA—LATVIA. Treaty of Alliance, provisional commercial agreement, and reciprocal claims agreement, signed at Reval on Nov. 1, 1923, ratified by Latvia on Dec. 14 and by Esthonia on Dec. 20, 1923. *Nation* (N. Y.), Jan. 23, 1924, p. 99. Texts: *Europe*, Jan. 12, 1924, p. 52.
- 15 AUSTRIA—HUNGARY. Agreement signed by which the commodity exchange (contingent) convention, signed June 27, 1922, is made effective for first six months of 1924. *Commerce reports*, March 17, 1924, p. 727.
- 15 FINLAND—GREAT BRITAIN. Commercial treaty based upon most-favored-nation treatment signed at Helsingfors. *Commerce Reports*, Dec. 31, 1923, p. 902.
- 16 SOVIET RUSSIA—UNITED STATES. Note of Dec. 16, 1923, from Russian Foreign Office to President Coolidge asked recognition negotiations. Text: *Wash. Post*, Dec. 17, 1923, p. 1. Secretary Hughes' reply of Dec. 18 declined the request. Text: *Wash. Post*, Dec. 19, 1923, p. 1. *Cong. Rec.*, Dec. 20, 1923, p. 462. On Dec. 19, text of instructions from Russian Communist leader to Workers' Party of America made public. *Press notice*, Dec. 19, 1923. *N. Y. Times*, Dec. 20, 1923, p. 1. Article signed by editor of *Isvestia* made public. Text: *Wash. Post*, Dec. 25, 1923, p. 1. *Press notice*, Dec. 24, 1923.
- 18 TANGIER CONVENTION. Signed in Paris by representatives of Great Britain and France, and with reservations by Spain. Summary: *Times*, Dec. 19 and 27, 1923, p. 9. Text: *Europe*, Jan. 5, 1924, p. 22.
- 19 CHESTER CONCESSION. Turkish Commissioner of Works at Angora annulled grant because of failure to begin railroad construction within time specified. *Our World*, Feb., 1924, p. 117; *Cur. Hist.*, Feb., 1924, p. 715.
- 21 FINLAND—ICELAND. Commercial and navigation treaty signed at Helsingfors. *Commerce Reports*, Feb. 18, 1924, p. 461.

December, 1923

- 22 FRANCE—URUGUAY. Financial agreement signed at Montevideo. Text: *D. O. (Uruguay)*, Dec. 26, 1923, no. 5310.
- 27 BOXER INDEMNITY. China replied to joint notes of Great Britain, United States, France, Japan, Italy, Spain, Belgium and the Netherlands, sent on Feb. 24 and Nov. 5, 1923, demanding that China make future payments in gold francs. *Wash. Post*, Dec. 29, 1923, p. 3. Text: *Nation* (N. Y.), March 5, 1924, p. 267.
- 27 DENMARK—FINLAND. Commercial treaty signed Aug. 3, 1923, ratified by both countries. *Commerce Reports*, Feb. 25, 1924, p. 527.
- 27 to Jan. 23, 1924 MEXICO—UNITED STATES. Special claims convention of Sept. 10, 1923, ratified by Mexico on Dec. 27. *Wash. Post*, Dec. 29, 1923, p. 1. General claims convention of Sept. 8, 1923, ratified by Mexico on Jan. 2, 1924. *N. Y. Times*, Jan. 3, 1924, II, 3. On Jan. 23, the United States Senate ratified both conventions. Texts: *Cong. Rec.*, Jan. 23, 1924, p. 1365.
- 28 FRANCE—GREAT BRITAIN. Protocol signed in London settling Central African boundary between Anglo-Egyptian Sudan and French Equatorial Africa. *Times*, Dec. 31, 1923, p. 9. *Cur. Hist.*, Mar., 1924, 19: 1099.
- 29 GREAT BRITAIN—UNITED STATES. Exchanged ratifications of agreement of June 23, 1923, extending for five years the arbitration convention of April 4, 1908. *Cong. Rec.*, Dec. 18, 1923, p. 410. *U. S. Treaty series*, no. 674.
- 31 CANADA—UNITED STATES. Reciprocal copyright arrangement, effective Jan. 1, 1924; effected under provisions of Canadian copyright act of 1921 and the Act of Congress, March 4, 1909. *Press notice*, Dec. 31, 1923.

January, 1924

- 1 GREECE—SERBIA. Four protocols were annexed to convention of May 10, 1923, regarding Serbian Free Zone in Saloniki: (1) Railway service. (2) Posts, telegraphs and telephones. (3) Sanitary service. (4) Service of the port. *Commerce Reports*, March 3, 1924, p. 600.
- 2 PEACE PROPOSAL OF GERMANY. State Department announced that the German Ambassador, on behalf of his government, recently proposed to the powers interested in the Rhine (France, Great Britain, Italy and Germany) a "solemn agreement not to go to war for a generation." *Press notice*, Jan. 2, 1924.

January, 1924

- 4 FILENE PEACE PRIZES. Announced that E. A. Filene of Boston had offered \$50,000 in prizes for competition among French, English and Italian writers along general lines of Bok competition in the United States. *N. Y. Times*, Jan. 4 and 10, 1924, p. 1 and 4.
- 4-7 TRANSCAUCASIAN CONGRESS OF SOVIETS. Second congress held at Tiflis, with representatives from Georgia, Armenia, Azerbaidjan, Adjaristan, Abkhasia and Nakhichevan. *Russian information*, Feb. 2, 1924, p. 77.
- 7 to Feb. 4 AMERICAN PEACE AWARD. Winning plan made public on Jan. 7. Text: *N. Y. Times*, Jan. 7, 1924, p. 1. *Cong. Rec.*, Jan. 7, 1924, p. 569. Announced on Feb. 4 that Charles H. Levermore, secretary of New York Peace Society, had won the prize. *Wash. Post*, Feb. 5, 1924, p. 1.
- 8 CANADA—ITALY. Ratifications of commercial treaty of Jan. 4, 1923, exchanged in London. *Commerce Reports*, Feb. 4, 1924, p. 330. *Cmd.* 2053.
- 8 POLAND—SOVIET RUSSIA. Ratifications of sanitary convention of Feb., 1923 exchanged at Warsaw. *Temps*, Jan. 10, 1924, p. 1.
- 12 LITTLE ENTENTE CONFERENCE. Closed at Belgrade, after discussing Hungarian loan, reparation question and recognition of Soviet Russia. *N. Y. Times*, Jan. 14, 1924, p. 3. *Times*, Jan. 14, 1924, p. 12.
- 15 GREAT BRITAIN—GREECE. Diplomatic relations resumed. *N. Y. Times*, Jan. 17, 1924, p. 3. *Cur. Hist.*, Mar., 1924, 19: 1090.
- 15 PANAMA—UNITED STATES. Agreement whereby the United States is to share in the road-building program of the republic signed at Panama. Panama reciprocates by permitting United States military forces to use all roads. *Evening Star*, Jan. 16, 1924.
- 18-24 LEAGUE OF NATIONS COVENANT. Commission of jurists met at Geneva and reached agreement on answers to questions of Council on interpretation of the Covenant. *L. N. M. S.*, Jan., 1924, p. 2.
- 18 PAN-AMERICAN CONFERENCE TREATIES. Brazil approved entire series of agreements negotiated at Santiago Conference of 1923. *Cur. Hist.*, March, 1924, 19: 965.
- 20 ALBANIA—ITALY. Commercial treaty signed on basis of reciprocal most-favored-nation treatment. *Commerce reports*, March 3, 1924, p. 600.
- 21 FRANCE—GREAT BRITAIN. Declaration signed in London, confirming protocol of Jan. 10, 1924, defining boundary between Anglo-

January, 1924

Egyptian Sudan and French Equatorial Africa. Text: *J. O.*, Feb. 27, 1924, p. 2019.

- 21 LENIN, NICKOLAI. Premier of Russia died at Gorky, aged 54. *Wash. Post*, Jan. 23, 1924, p. 1. *Times*, Jan. 23, 1924, p. 8, 12.
- 22 HUNGARIAN RECONSTRUCTION. Report of Financial Committee of the League, and two protocols relating to political conditions and measures to be taken by Hungary; transmitted to Reparation Commission by Hungarian Committee of the League Council. *L. N. M. S.*, Feb. 15, 1924, p. 4.
- 23 GREAT BRITAIN—UNITED STATES. Ship liquor treaty signed in Washington to become effective on exchange of ratifications. *Times*, Jan. 24, 1924, pp. 11-12. Text: *N. Y. Times*, March 5, 1924, p. 19; *Cong. Rec.*, Mar. 13, 1924, p. 4235; *Cmd.* 2063.
- 25 CZECHOSLOVAKIA—FRANCE. Treaty of alliance and friendship signed at Paris. *Times*, Jan. 26, 1924, p. 9. *Ga. de Prague*, Jan. 30, 1924, p. 1. Text: *Europe*, Feb. 2, 1924, p. 154. *Nation* (N. Y.), Feb. 27, 1924, p. 241.
- 27 BULGARIA—SERBIA. Final clauses of recent protocols, including agreement for payment of Serbia's war debt to Bulgaria, registered at League of Nations. *Wash. Post*, Jan. 28, 1924, p. 2.
- 27 ITALY—SERBIA. "Pact of amity," additional protocol, and Fiume treaty (annexing Fiume to Italy) signed at Rome. Text: *Times*, Jan. 30, 1924, p. 10; *Europe*, Feb. 16, 1924, p. 214; *Nation* (N. Y.), March 19, 1924, p. 326.
- 28 FRANCE—TUNIS. Convention relating to war profits, signed at Paris, Jan. 22, 1924, promulgated in France. Text: *J. O.*, Jan. 29, 1924, p. 994.
- 28 UNIVERSITY INFORMATION OFFICE. International Office, authorized by Fourth Assembly of the League of Nations on Sept. 29, 1923, announced its plans. *L. N. M. S.*, Jan., 1924, p. 8.
- 29 GREECE—UNITED STATES. Diplomatic relations resumed. *Press notice*, Jan. 29, 1924. *Cur. Hist.*, March, 1924, 19: 1090.
- 31 CZECHOSLOVAKIA—DENMARK. Commercial convention signed at Prague, based on most-favored-nation treatment. *Ga. de Prague*, Feb. 6, 1924, p. 3.

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- 1-2 GREAT BRITAIN—SOVIET RUSSIA. By note of Feb. 1, British government recognized Union of Socialist Soviet Republics. Text: *Times*, Feb. 2, 1924, p. 10. On Feb. 2, declaration issued by

February, 1924

- Second Congress of Soviets of the U. S. S. R. On Feb. 8, Russian government sent reply to note of Feb. 1. Text: *Times*, Feb. 9, 1924, p. 100; *Russian information*, Feb. 16, 1924, p. 105.
- 1 HONDURAS. Dictatorship proclaimed by Lopez Gutierrez, followed by revolutionary movement against him. *Cur. Hist.*, March, 1924, 19: 964.
 - 1 IRISH BOUNDARY CONFERENCE. Opened in London. *Times*, Feb. 2, 1924, p. 10.
 - 2 UNION OF SOCIALIST SOVIET REPUBLICS. Congress closed at Riga after making arrangements made necessary by Lenin's death. New constitution of the Union has entered into force. *Times*, Feb. 5, 1924, p. 10.
 - 3 WILSON, WOODROW. Died in Washington, aged 67 years. *Cur. Hist.*, March, 1924, 19: 887.
 - 6 AUSTRIA—RUMANIA. Commercial treaty, based on most-favored-nation principle, signed at Bucharest. *N. Y. Times*, Feb. 7, 1924, p. 5.
 - 7 CHINA—GERMANY. Reached agreement under which Germany's war indemnity to China is fixed at \$100,000,400, less the claims of certain firms for property confiscated by China on entering the war. *Times*, Feb. 8, 1924, p. 10.
 - 7 FRANCE—SPAIN. Exchanged letters regarding application of Tangier convention of Dec. 18, 1923. *Times*, Feb. 15 and 18, 1924, pp. 11 and 18.
 - 7 ITALY—SOVIET RUSSIA. Commercial treaty signed at Rome, establishing *de jure* recognition of Russian government. *Wash. Post*, Feb. 8, 1924, p. 3. *Times*, Feb. 9, 1924, p. 9.
 - 7 LEAGUE OF NATIONS. Arms Limitation Commission. First conference ended. United States officially represented. *N. Y. Times*, Feb. 8, 1924, p. 5.
 - 7 NICARAGUA—UNITED STATES. Text of notes exchanged between the two governments on Oct. 8 and Dec. 13, 1923, relating to withdrawal of United States marines at Managua and establishment of efficient constabulary, made public. *Press notice*, Feb. 7, 1924.
 - 10 CZECHOSLOVAKIA—HUNGARY. Two protocols signed relative to application of decision of League of Nations of April 23, 1923, on delimitation of frontier in region of Somosov. *Ga. de Prague*, Feb. 12, 1924, p. 1.

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- 13 HONDURAS—UNITED STATES. Diplomatic relations severed, because of failure of political factions in Honduras to reach agreement to restore constitutional government by peaceful means. *Wash. Post*, Feb. 14, 1924, p. 3. *N. Y. Times*, Feb. 14, 1924, p. 3.
- 15 ISLE OF PINES. Treaty between Cuba and the United States, conceding the Isle of Pines to Cuba, favorably reported by Senate Committee on Foreign Relations. *Wash. Post*, Feb. 16, 1924, p. 4.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Paris, Oct. 13, 1919. Protocol, Paris, May 1, 1920.

Ratification:

Czechoslovakia. Nov. 23, 1923. *Monit.*, Feb. 10, 1924, p. 627.

AGRICULTURAL WORKERS' ASSOCIATIONS. Geneva, Nov. 12, 1921.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 271.

Sweden. *I. L. O. B.*, Dec. 12, 1923, p. 260.

ARBITRATION CLAUSES. Protocol. Geneva, Sept. 24, 1923.

Text and Signatures. *L. N. O. J.*, Jan., 1924, p. 235.

COMMERCIAL STATISTICS. Brussels, Dec. 31, 1923.

Adhesion:

Hungary. Jan. 21, 1924. *E. G.*, Feb. 6, 1924, p. 23.

COPYRIGHT CONVENTION. Montevideo, Jan. 11, 1889.

Adhesion:

Austria. Dec. 3, 1923. *Monit.*, Feb. 27, 1924, p. 942.

COPYRIGHT UNION. Revision. Berlin, Nov. 13, 1908. Protocol, Berne, Mar. 20, 1914.

Adhesion:

Canada. Jan. 1, 1924. *E. G.*, Feb. 6, 1924, p. 24.

CUSTOMS DOCUMENTS. Santiago, May 3, 1923.

Ratification:

Brazil. Jan. 18, 1924. *P. A. U.*, March, 1924, p. 308.

United States. Feb. 18, 1924. *Cong. Rec.*, Feb. 18, 1924, p. 2658.

ELBE NAVIGATION. Dresden, Feb. 22, 1922. Additional protocol, Prague, Jan. 27, 1923.

Promulgation:

France. Feb. 7, 1924. *J. O.*, Feb. 9, 1924, p. 1402.

EMPLOYMENT OF CHILDREN AT SEA. Genoa, July 9, 1920.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

EMPLOYMENT OF CHILDREN IN AGRICULTURE. Geneva, Nov. 16, 1921.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 271.

Sweden. Nov. 27, 1923. *I. L. O. B.*, Dec. 12, 1923, p. 260.

EMPLOYMENT OF CHILDREN IN INDUSTRY. Washington, Nov. 28, 1919.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

EMPLOYMENT OF YOUNG PERSONS AS TRIMMERS AND STOKERS. Geneva, Nov. 11, 1921.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 271.

EMPLOYMENT (FINDING) FOR SEAMEN. Genoa, July 10, 1920.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

FREEDOM OF TRANSIT. Barcelona, April 20, 1921.

Ratification:

Austria. Nov. 15, 1923. *L. N. O. J.*, Jan., 1924, p. 105.

GENEVA CONVENTION. Aug. 22, 1864. Revisions.

Adhesion:

Austria. Jan. 27, 1924. *E. G.*, Feb. 6, 1924, p. 19.

INTERNATIONAL EXCHANGE OF DOCUMENTS AND PUBLICATIONS. Brussels, March 15, 1886.

Adhesion:

Hungary. July 30, 1923. *Monit.*, Feb. 2, 1924, p. 515.

LEAGUE OF NATIONS. Covenant. Protocol of Amendments. Geneva, Oct. 3-5, 1921.

Ratification:

Albania. (Art. 4, 6) Jan. 22, 1924. *L. N. M. S.*, Jan., 1924, p. 3.

Monit., Feb. 7, 1924, p. 580.

Latvia. (Art. 26) *L. N. M. S.*, Dec., 1923, p. 292.

Portugal. (Art. 4, 6, 12, 13, 15, 16, 26) Oct. 5, 1923. *L. N. O. J.*, Dec., 1923, p. 1519.

Spain. (Art. 6) *L. N. M. S.*, Jan., 1924, p. 3.

Uruguay. (Art. 4, 6, 12, 13, 15, 16, 26) *L. N. M. S.*, Jan., 1924, p. 3.

Signature:

Canada. (Art. 16) *L. N. M. S.*, Nov., 1923, p. 269.

LETTERS, ETC., OF DECLARED VALUE. Madrid, Nov. 20, 1920.

Adhesion:

Great Lebanon.

Syria. *Monit.*, Nov. 25, 1923, p. 5635.

Palestine. *Monit.*, Dec. 17-18, 1923, p. 5962.

Ratification:

Brazil. Oct. 31, 1923. *Ga. de Madrid*, Feb. 14, 1924, p. 812.

MARITIME CONVENTIONS: (1) Collisions. (2) Salvage at sea. Brussels, Sept. 23, 1910.

Adhesion:

Spain. *Monit.*, Dec. 6, 1923, p. 5807.

MEDICAL EXAMINATION OF YOUNG PERSONS EMPLOYED AT SEA. Geneva, Nov. 10, 1921.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 271.

MERCHANDISE CLASSIFICATION. Santiago, May 3, 1923.

Ratification:

Brazil. Jan. 19, 1924. *P. A. U.*, March, 1924, p. 308.

United States. Feb. 18, 1924. *Cong. Rec.*, Feb. 18, 1924, p. 2659.

MONEY ORDERS. Madrid, Nov. 30, 1920.

Adhesion:

Great Lebanon.

Syria. *Monit.*, Nov. 25, 1923, p. 5635.

Ratification:

Brazil. Oct. 31, 1923.

Greece. Nov. 10, 1923. *Ga. de Madrid*, Feb. 14, 1924, p. 812.

MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, Oct. 11, 1909.

Adhesion:

Alderney Island. Aug. 5, 1923. *E. G.*, Nov. 21, 1923, p. 420.

NAVIGABLE WATERWAYS. Convention and Protocol. Barcelona, April 20, 1921.

Ratification:

Austria, Nov. 15, 1923. *L. N. O. J.*, Jan., 1924, p. 105.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

PAN-AMERICAN ARBITRATION. Santiago, May 3, 1923.

Ratification:

Brazil. Jan. 19, 1924. *P. A. U.*, March, 1924, p. 308.

PARCEL POST. Madrid, Nov. 30, 1920.

Ratification:

Brazil. Oct. 31, 1923. *Ga. de Madrid*, Feb. 14, 1924, p. 812.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, March 20, 1883. Revision, Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Esthonia. Dec. 18, 1923. *E. G.*, Jan. 16, 1924. *Monit.*, Jan. 27, 1924, p. 422.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912.

Adhesion:

Reunion Island. Jan. 21, 1924. *Monit.*, Feb. 9, 1924, p. 615.

SANITARY CONVENTION. Paris, Dec. 3, 1903.

Declaration:

Hungary. Jan. 14, 1924. *E. G.*, Feb. 6, 1924, p. 20.

SANITARY CONVENTION. Venice, March 19, 1897.

Adhesion:

Czechoslovakia. *E. G.*, Dec. 8, 1923, p. 444. *Monit.*, Dec. 16, 1923, p. 5940.

SPITZBERGEN. Paris, Feb. 9, 1920.

Ratification:

United States. Feb. 18, 1924. *Cong. Rec.*, Feb. 18, 1924, p. 2651.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, June 11, 1908.

Adhesion:

Great Lebanon.

Syria. *Monit.*, Jan. 31, 1924, p. 484.

TRADE MARKS. Santiago, May 3, 1923.

Ratification:

Brazil. Jan. 19, 1924. *P. A. U.*, March, 1924, p. 308.

UNEMPLOYMENT CONVENTION. Washington, Nov. 28, 1919.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

UNEMPLOYMENT INDEMNITY IN CASE OF LOSS OF SHIP. Genoa, July 9, 1920.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

UNIVERSAL POSTAL UNION. Revision. Madrid, Nov. 30, 1920.

Adhesion:

Esthonia. Oct. 30, 1923. *E. G.*, Feb. 6, 1924, p. 21.

Great Lebanon.

Syria. *Monit.*, Nov. 25, 1923, p. 5635.

Ratification:

Brazil. Oct. 31, 1923. *Ga. de Madrid*, Feb. 14, 1924, p. 812.

Dominican Republic. *Monit.*, Dec. 22, 1923, p. 6049.

WEEKLY REST IN INDUSTRY. Geneva, Nov. 17, 1921.

Ratification:

Esthonia. Nov. 30, 1923.

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 270.

WHITE LEAD IN PAINT. Geneva, Nov. 19, 1921.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 271.

Sweden. *I. L. O. B.*, Dec. 12, 1923, p. 260.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 25, 1906.

Adhesion:

China. Dec. 6, 1923. *Monit.*, Jan. 6, 1924, p. 66.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Isle of Jersey.

Isle of Guernsey.

Isle of Man. *Monit.*, Nov. 24, 1923, p. 5622.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921.

Ratification:

Portugal. Dec. 27, 1923. *Monit.*, Jan. 20, 1924, p. 263.

WORKMEN'S COMPENSATION IN AGRICULTURE. Geneva, Nov. 12, 1921.

Ratification:

Poland. Dec. 4, 1923. *I. L. O. B.*, Dec. 26, 1923, p. 271.

Sweden. *I. L. O. B.*, Dec. 12, 1923, p. 260.

M. ALICE MATTHEWS.

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PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN ¹

American Army of Occupation in the Rhineland. Correspondence regarding the reimbursement of the costs. (Misc. No. 6, 1923.) Cmd. 1973. 6½d.

Anglo-Afghan trade convention, signed at Kabul, June 5, 1923. (Treaty Series, 1923, No. 21.) 3½d.

Anglo-Italian arbitration. Notes exchanged further renewing the agreement of Feb. 1, 1904. London, Aug. 14, 1923. (Treaty Series, 1923, No. 22.) 2½d.

Arbitration agreement between Great Britain and France. Renewal (Treaty Series, 1923, No. 20.) 2½d.

British mandated territory and Belgian mandated territory in East Africa. Correspondence regarding the modification of the boundary (Cmd. 1794, in continuation of Cmd. 1794.) 2s. ½d.

Canada and France. Commercial convention, signed at Paris, Dec. 1922. (Treaty Series, 1923, No. 25.) 1s. 1d.

Commercial travelers' samples. Agreement between Great Britain and the Czecho-Slovak Republic. Signed at London, Jan. 3, 1923. (Treaty Series, 1923, No. 19.) 2½d.

Egyptian Indemnity Act. Despatch from H. M. High Commissioner to Egypt enclosing the decision of the Council of Ministers relative to the Indemnity Act. Text of the Indemnity Act and notes exchanged with the Egyptian Government. (Treaty Series, 1923, No. 32.) 6½d.

Egyptian law relating to the conditions of service, retirement and dismissal of officials, employees and agents of foreign nationality. (Law No. 28 of 1923); together with notes exchanged between the British and Egyptian Governments. (Treaty Series, 1923, No. 33.) 6½d.

Flag of states having no seacoast, Declaration recognizing the right to a, signed at Barcelona, April 20, 1921. (Treaty Series, 1923, No. 29.) 2½d.

Freedom of transit. Convention and statute, signed at Barcelona, April 20, 1921. (Treaty Series, 1923, No. 27.) 6½d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationary Office, Imperial House, Kingsway, London, W. C. 2.

German Reparation (Recovery) Orders. Nos. 2 and 3, Oct. 29, 1923. (S. R. & O. 1923, Nos. 1320 and 1321.) 1½d. each.

International convention for the suppression of the traffic in women and children. Opened for signature at Geneva from Sept. 30, 1921, to March 31, 1922. (Treaty Series, 1923, No. 26.) 6½d.

International uniformity and perfection of the metric system. International convention of Oct. 6, 1921, modifying the international convention of May 20, 1875; together with the international convention of 1875. (Treaty Series, 1923, No. 24.) 6½d.

Mixed Arbitral Tribunals. *Tribunaux arbitraux mixtes. Recueil des décisions.* Nos. 28-29-30. July to Sept. 1923. (Combined.) *Foreign Office.* 18s. 3½d.

Nationality of married women. Report by the select committee appointed to join with a committee of the House of Commons; with proceedings, minutes of evidence and appendices. (H. C. Reports and Papers, Sess. 1923, No. 115.) 5s. 2½d.

Navigable waterways of international concern, Convention and statute on the régime of; with additional protocol to the convention. Signed at Barcelona, April 20, 1921. (Treaty Series, 1923, No. 28.) 6½d.

Oyster fisheries outside territorial waters in the seas lying between the coasts of Great Britain and those of France. Declaration by the British and French Governments, signed at Paris, Sept. 29, 1923. (Treaty Series, 1923, No. 31.) 2½d.

Palestine. Proposed formation of an Arab agency. Correspondence with the High Commissioner for Palestine. (Cmd. 1989.) 3½d.

Patents of Turkish nations vested in Custodian. Order of the Board of Trade, Oct. 26, 1923, for the restoration of vested patents and vested applications. (S. R. & O. 1923, No. 1386.) 1½d.

Permanent Court of International Justice. Protocol establishing, signed at Geneva, Dec. 16, 1920. (Treaty Series, 1923, No. 23.) 6½d.

United Kingdom and Latvia. Treaty of commerce and navigation, signed at London, June 22, 1923. (Treaty Series, 1923, No. 30.) 3½d.

UNITED STATES ²

Allegiance. Brief on behalf of United States on question of diverse nationality. *Mixed Claims Commission, United States and Germany.* 1923. 15 p.

Claim of Government of Netherlands against United States for personal injuries sustained by Arend Kamp and Francis Gort while U. S. S. Canibas

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

was loading at Rotterdam. Letter recommending appropriation, Dec. 20, 1923. 4 p. (S. doc. 11, 68th Cong. 1st sess.) Paper, 5c. *State Dept.*

Immigration. Selection of immigrants at the source. Brief submitted by John C. Box. 1923. 10 p. *Immigration and Naturalization Committee.*

Inter-American High Commission, United States Section. Reports of Secretary submitted Jan. 10 and Oct. 22, 1923. 78 p. [English and Spanish.] *Treasury Dept.*

International American Conference. Quinta Conferencia Internacional Americana, Santiago de Chile, 25 de Marzo-3 de Mayo, 1923. Tratado, Convenciones, y resoluciones. 1923. 63 p. *Pan-American Union.*

International communications and international telegraph convention, St. Petersburg, 1875, Lisbon, 1908. By P. E. D. Nagle. 1923. 68 p. il. map. *Foreign and Domestic Commerce Bureau.* (Miscellaneous Series 121.) Paper, 10c.

League of Nations, its court, and its law, and American cooperation for world peace. By David Jayne Hill. 24 p. (S. doc. 9, 68th Cong. 1st sess.) [From Saturday Evening Post, Aug. 11 and Nov. 3, 1923.] Paper, 5c.

Limitation of naval armament. Treaty between United States, British Empire, France, Italy and Japan, signed at Washington, Feb. 6, 1922. 36 p. (Treaty Series 671). French and English. *State Dept.*

Lusitania, Steamship. Opinion of Mixed Claims Commission, United States and Germany. Nov. 1, 1923. 17-32 p.

Mixed Claims Commission, United States and Germany. Administrative decision No. 1 dealing with liabilities of Germany on all claims (save those expressly excepted) asserted by United States in behalf of its nationals. Nov. 1, 1923. 3 p.

———. Administrative decision No. 2, dealing with functions of commission and announcing fundamental rules of decision. Nov. 1, 1923. 15 p.

Monroe Doctrine, Observations on. Address by Charles E. Hughes, Secretary of State, delivered before American Bar Association, Minneapolis, Minn., Aug. 30, 1923. 20 p. *State Dept.* (Spanish edition issued by Pan-American Union.)

———. One hundred years of. By Henry Cabot Lodge. 14 p. (S. doc. 8, 68th Cong. 1st sess.) [From Scribner's Magazine, Oct., 1923.] Paper, 5c.

Russia. Foreign capital investments in Russian industries and commerce. By L. J. Lewery. 1923. 28 p. *Foreign and Domestic Commerce Bureau.* (Miscellaneous Series 124.) Paper, 5c.

Tariff. Agreement effected by exchange of notes between United States and Brazil according mutual unconditional most-favored-nation treatment in customs matters. Signed at Washington, Oct. 18, 1923. 4 p. (Treaty Series 672.) *State Dept.*

Trade marks. Convention for protection of commercial, industrial, and agricultural trade marks and commercial names, signed in Santiago, Chile, Apr. 28, 1923. 68 p. (English, Spanish, Portuguese and French.) *Inter-American High Commission.*

Universal Postal Union. Report of committee to rearrange convention of Madrid and recommend any changes deemed necessary in anticipation of Stockholm congress to meet June 4, 1924. 91 p. *Post Office Dept.*

War risk insurance. Opinion of Mixed Claims Commission, United States and Germany in war-risk insurance premium claims. Nov. 1, 1923. 33-59 p.

World War Foreign Debt Commission and obligations of foreign governments. Extract from report of Secretary of Treasury on state of finances, fiscal year 1923. 29 p. *Treasury Dept.*

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

PORTERFIELD AND MIZUNO *v.* WEBB AND WOOLWINE¹

Supreme Court of the United States

Decided November 12, 1923

Appellants brought this suit to enjoin the above named Attorney General and District Attorney from enforcing the California Alien Land Law, submitted by the initiative and approved by the electors, November 2, 1920.

Appellants are residents of California. Porterfield is a citizen of the United States and of California. Mizuno was born in Japan of Japanese parents and is a subject of the Emperor of Japan. Porterfield is the owner of a farm in Los Angeles County containing eighty acres of land, which is particularly adapted to raising vegetables, and which for some years has been devoted to that and other agricultural purposes. The complaint alleges that Mizuno is a capable farmer and a desirable person to become a tenant of the land, and that Porterfield desires to lease the land to him for a term of five years, and that he desires to accept the lease, and that the lease would be made but for the act complained of. And it is alleged that the appellees, as Attorney General and District Attorney, have threatened to enforce the act against the appellants if they enter into such lease, and will forfeit, or attempt to forfeit, the leasehold interest to the State and will prosecute the appellants criminally for violation of the act.¹ It is further alleged that the act is so drastic and the penalties attached to a violation of it are so great that neither of the appellants may make the lease even for the purpose of testing the constitutionality of the act, and that, unless the court shall determine its validity in this suit, appellants will be compelled to submit to it, whether valid or invalid, and thereby will be deprived of their property without due process of law and denied equal protection of the laws.

Appellants made a motion for a temporary injunction to restrain appellees, during the pendency of the suit, from bringing or permitting to be brought any proceeding for the purpose of enforcing the act against the appellants. This was heard by three judges as provided in section 266 of the Judicial Code. The motion was denied.

The act provides in sections 1 and 2 as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit, and inherit real property, or any interest therein, in this state, in the same manner and

¹ 263*U. S. 225.

to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Other sections provide penalties by escheat and imprisonment for violation of section 2.

The treaty between the United States and Japan (37 Stat. 1504-1509) does not confer upon Japanese subjects the privilege of acquiring or leasing land for agricultural purposes. *Terrace et al. v. Thompson*, 263 U. S. 197.

Appellants contend that the law denies to ineligible aliens equal protection of the laws secured by the Fourteenth Amendment, because it forbids them to lease land in the State although the right to do so is conferred upon all other aliens. They also contend that the act is unconstitutional because it deprives Porterfield of the right to enter into contracts for the leasing of his realty, and deprives Mizuno of his liberty and property by debarring him from entering into a contract for the purpose of earning a livelihood in a lawful occupation.

This case is similar to *Terrace et al. v. Thompson*, *supra*. In that case the grounds upon which the Washington Alien Land Law was attacked included those on which the California act is assailed in this case. There the prohibited class was made up of aliens who had not in good faith declared intention to become citizens. The class necessarily includes all ineligible aliens and in addition thereto all eligible aliens who have failed so to declare. In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the States have wide discretion. Each has its own problems, depending on circumstances existing there. It is not always practical or desirable that legislation shall be the same in different States. We cannot say that the failure of the California Legislature to extend the prohibited class so as to include eligible aliens who have failed to declare their intention to become citizens of the United States was arbitrary or unreasonable. See *Miller v. Wilson*, 236 U. S. 373, 383, 384, and cases cited.

Our decision in *Terrace et al. v. Thompson*, *supra*, controls the decision of all questions raised here.

The order of the District Court is affirmed.

TERRACE ET AL. v. THOMPSON¹*Supreme Court of the United States*

Decided November 12, 1923

Appellants brought this suit to enjoin the Attorney General of Washington from enforcing the Anti-Alien Land Law of that State, Chapter 50, Laws, 1921, on the grounds that it is in conflict with the due process and equal protection clauses of the Fourteenth Amendment; with the treaty between the United States and Japan, and with certain provisions of the Constitution of the State.

The appellants are residents of Washington. The Terraces are citizens of the United States and of Washington. Nakatsuka was born in Japan of Japanese parents and is a subject of the Emperor of Japan. The Terraces are the owners of a tract of land in King County which is particularly adapted to raising vegetables, and which for a number of years had been devoted to that and other agricultural purposes. The complaint alleges that Nakatsuka is a capable farmer and will be a desirable tenant of the land; that the Terraces desire to lease their land to him for the period of five years; that he desires to accept such lease, and that the lease would be made but for the act complained of. And it is alleged that the defendant, as Attorney General, has threatened to and will take steps to enforce the act against the appellants if they enter into such lease, and will treat the leasehold interest as forfeited to the State, and will prosecute the appellants criminally for violation of the act; that the act is so drastic and the penalties attached to its violation are so great that neither of the appellants may make the lease even to test the constitutionality of the act, and that, unless the court shall determine its validity in this suit, the appellants will be compelled to submit to it, whether valid or invalid, and thereby will be deprived of their property without due process of law and denied the equal protection of the laws.

The Attorney General made a motion to dismiss the amended complaint upon the ground that it did not state any matters of equity or facts sufficient to entitle the appellants to relief. The District Court granted the motion and entered a decree of dismissal on the merits. The case is here on appeal from that decree.

Section 33² of Article II of the Constitution of Washington prohibits the

¹ 263 U. S. 197.

² Section 33. The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of land hereafter made to any alien directly or in trust for such alien shall be void; Provided, that the provisions on this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development

ownership of land by aliens other than those who in good faith have declared intention to become citizens of the United States, except in certain instances not here involved. The act³ provides in substance that any such alien shall not own, take, have or hold the legal or equitable title, or right to any benefit of any land as defined in the act, and that land conveyed to or for the use of aliens in violation of the state constitution or of the act shall thereby be forfeited to the State. And it is made a gross misdemeanor, punishable by fine or imprisonment or both, knowingly to transfer land or the right to the control, possession or use of land to such an alien. It is also made a gross misdemeanor for any such alien having title to such land or the control, possession or use thereof, to refuse to disclose to the Attorney General or the prosecuting attorney the nature and extent of his interest in the land. The Attorney General and the prosecuting attorneys of the several counties are charged with the enforcement of the act.

1. The Attorney General questions the jurisdiction of the court to grant equitable relief even if the statute be unconstitutional. He contends that the appellants have a plain, adequate and speedy remedy at law; that the case involves but a single transaction, and that, if the proposed lease is made, the only remedy which the State has, so far as civil proceedings are concerned, is an escheat proceeding in which the validity of the law complained of may be finally determined; that an acquittal of the Terraces of the criminal offense created by the statute would protect them from further prosecution, and that Nakatsuka is liable criminally only upon his failure to disclose the fact that he holds an interest in the land.

The unconstitutionality of a State law is not of itself ground for equitable relief in the courts of the United States. That a suit in equity does not lie

thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purpose of this prohibition.

³ Section 1. In this act, unless the context otherwise requires,

(a) "Alien" does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and all corporations and other organized groups of persons a majority of whose capital stock is owned or controlled by aliens or a majority of whose members are aliens;

(b) "Land" does not include lands containing valuable deposits of minerals, metals, iron, coal or fire clay or the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom, but does include every other kind of land and every interest therein and right to the control, possession, use, enjoyment, rents, issues or profits thereof. . . .

(d) To "own" means to have the legal or equitable title to or the right to any benefit of;

(e) "Title" includes every kind of legal or equitable title;

Section 2. An alien shall not own land or take or hold title thereto. No person shall take or hold land or title to land for an alien. Land now held by or for aliens in violation of the constitution of the state is forfeited to and declared to be the property of the state. Land hereafter conveyed to or for the use of aliens in violation of the constitution or of this act shall thereby be forfeited to and become the property of the state.

where there is a plain, adequate and complete remedy at law is so well understood as not to require the citation of authorities. But the legal remedy must be as complete, practical and efficient as that which equity could afford. *Boise Artesian Water Co. v. Boise City*, 213 U. S. 276, 281; *Walla Walla City v. Walla Walla Water Co.*, 172 U. S. 1, 11, 12. Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a Federal court of equity. *Cavanaugh v. Looney*, 248 U. S. 453, 456; *Truax v. Raich*, 239 U. S. 33, 37, 38. See also *Ex parte Young*, 209 U. S. 123, 155, 162; *Adams v. Tanner*, 244 U. S. 590, 592; *Greene v. Louisville & Interurban Railroad Co.*, id. 499, 506; *Home Telephone & Telegraph Co. v. Los Angeles*, 227 U. S. 278, 293; *Philadelphia Co. v. Stimson*, 223 U. S. 605, 621; *Western Union Telegraph Co. v. Andrews*, 216 U. S. 165; *Dobbins v. Los Angeles*, 195 U. S. 223, 241; *Davis & Farnum Manufacturing Co. v. Los Angeles*, 189 U. S. 207, 217.

The Terraces' property rights in the land include the right to use, lease and dispose of it for lawful purposes (*Buchanan v. Warley*, 245 U. S. 60, 74), and the Constitution protects these essential attributes of property (*Holden v. Hardy*, 169 U. S. 366, 391), and also protects Nakatsuka in his right to earn a livelihood by following the ordinary occupations of life. *Truax v. Raich*, *supra*; *Meyer v. State of Nebraska*, 262 U. S. 390. If, as claimed, the state act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then its enforcement will deprive the owners of their right to lease their land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer, and the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants, as to which they have no remedy at law which is as practical, efficient or adequate as the remedy in equity. And assuming, as suggested by the Attorney General, that after the making of the lease the validity of the law might be determined in proceedings to declare a forfeiture of the property to the State or in criminal proceedings to punish the owners, it does not follow that they may not appeal to equity for relief. No action at law can be initiated against them until after the consummation of the proposed lease. The threatened enforcement of the law deters them. In order to obtain a remedy at law, the owners, even if they would take the risk of fine, imprisonment and loss of property must continue to suffer deprivation of their right to dispose of or lease their land to any such alien until one is found who will join them in violating the terms of the enactment and take the risk of forfeiture. Similarly Nakatsuka must continue to be deprived of his right to

follow his occupation as farmer until a land owner is found who is willing to make a forbidden transfer of land and take the risk of punishment. The owners have an interest in the freedom of the alien, and he has an interest in their freedom, to make the lease. The State act purports to operate directly upon the consummation of the proposed transaction between them, and the threat and purpose of the Attorney General to enforce the punishments and forfeiture prescribed prevents each from dealing with the other. *Truax v. Raich, supra*. They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had, if the law complained of is shown to be in contravention of the Federal Constitution.

2. Is the act repugnant to the due process clause or the equal protection clause of the Fourteenth Amendment?

Appellants contend that the act contravenes the due process clause in that it prohibits the owners from making lawful disposition or use of their land, and makes it a criminal offense for them to lease it to the alien, and prohibits him from following the occupation of farmer; and they contend that it is repugnant to the equal protection clause in that aliens are divided into two classes,—those who may and those who may not become citizens, one class being permitted, while the other is forbidden, to own land as defined.

Alien inhabitants of a State, as well as all other persons within its jurisdiction, may invoke the protection of these clauses. *Yick Wo v. Hopkins*, 118 U. S. 356, 369; *Truax v. Raich, supra*, 39. The Fourteenth Amendment, as against the arbitrary and capricious or unjustly discriminatory action of the State, protects the owners in their right to lease and dispose of their land for lawful purposes and the alien resident in his right to earn a living by following ordinary occupations of the community, but it does not take away from the State those powers of police that were reserved at the time of the adoption of the Constitution. *Barbier v. Connolly*, 113 U. S. 27, 31; *Mugler v. Kansas*, 123 U. S. 623, 663; *Powell v. Pennsylvania*, 127 U. S. 678, 683; *In re Kemmler*, 136 U. S. 436, 449; *Lawton v. Steel*, 152 U. S. 133, 136; *Phillips v. Mobile*, 208 U. S. 472, 479; *Hendrick v. Maryland*, 235 U. S. 610, 622, 623. And in the exercise of such powers the State has wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace and good order of its people.

And, while Congress has exclusive jurisdiction over immigration, naturalization and the disposal of the public domain, each State, in the absence of any treaty provision to the contrary, has power to deny to aliens the right to own land within its borders. *Hauenstein v. Lynham*, 100 U. S. 483, 484, 488; *Blythe v. Hinckley*, 180 U. S. 333, 340. Mr. Justice Field, speaking for this court (*Phillips v. Moore*, 100 U. S. 208) said (page 212):

By the common law, an alien cannot acquire real property by operation of law, but may take it by act of the grantor, and hold it until office found; that is, until the fact of alienage is authoritatively established by a public officer, upon an inquest held at the instance of the government.⁴

State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause.

This brings us to a consideration of appellants' contention that the act contravenes the equal protection clause. That clause secures equal protection to all in the enjoyment of their rights under like circumstances. *In re Kemmler, supra; Giozza v. Tiernan*, 148 U. S. 657, 662. But this does not forbid every distinction in the law of a State between citizens and aliens resident therein. In *Truax v. Corrigan* (257 U. S. 312), this Court said (p. 337):

In adjusting legislation to the need of the people of a State, the legislature has a wide discretion and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable, that classification of persons is constantly necessary. . . . Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things, and persons, and class them in accordance with their pertinence to the purpose in hand.

The rights, privileges and duties of aliens differ widely from those of citizens; and those of alien declarants differ substantially from those of non-declarants. Formerly in many of the States the right to vote and hold office was extended to declarants, and many important offices have been held by them. But these rights have not been granted to nondeclarants. By various acts of Congress,⁵ declarants have been made liable to military duty, but no act has imposed that duty on nondeclarants. The fourth paragraph of Article I of the treaty invoked by the appellants, provides that the citizens or subjects of each shall be exempt in the territories of the other from compulsory military service either on land or sea, in the regular forces, or in the national guard, or in the militia; also from all contributions im-

⁴ In *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch 603, 609, 619, 620, it was said, per Story, J.: "It is clear by the common law, that an alien can take lands by purchase, though not by descent; or in other words he cannot take by the act of law, but he may by the act of the party. . . . In the language of the ancient law, the alien has the capacity to *take*, but not to *hold* lands, and they may be seized into the hands of the sovereign." See also 1 Cooley's *Blackstone* (4th ed.) 315, *372; 2 Kent's *Commentaries* (14th ed.) 80, *54.

⁵ Act of March 3, 1863, c. 75, 12 Stat. 731; Act of April 22, 1898, c. 187, 30 Stat. 361; Act of January 21, 1903, c. 196, 32 Stat. 775; Act of June 3, 1916, c. 134, §§57, 111, 39 Stat. 197; Act of May 18, 1917, c. 15, §2; Act of July 9, 1918, c. 143; Act of August 31, 1918, c. 166, 40 Stat. 76, 884, 955.

posed in lieu of personal service, and from all forced loans or military exactions or contributions. The alien's formally declared bona fide intention to renounce forever all allegiance and fidelity to the sovereignty to which he lately has been a subject, and to become a citizen of the United States and permanently to reside therein⁶ markedly distinguishes him from an ineligible alien or an eligible alien who has not so declared.

By the statute in question all aliens who have not in good faith declared intention to become citizens of the United States, as specified in section 1 (a), are called "aliens," and it is provided that they shall not "own" "land," as defined in clauses (d) and (b) of section 1 respectively. The class so created includes all, but is not limited to, aliens not eligible to become citizens. Eligible aliens who have not declared their intention to become citizens are included, and the act provides that unless declarants be admitted to citizenship within seven years after the declaration is made, bad faith will be presumed. This leaves the class permitted so to own land made up of citizens and aliens who may, and who intend to, become citizens, and who in good faith have made the declaration required by the naturalization laws. The inclusion of good faith declarants in the same class with citizens does not unjustly discriminate against aliens who are ineligible or against eligible aliens who have failed to declare their intention. The classification is based on eligibility and purpose to naturalize. Eligible aliens are free white persons and persons of African nativity or descent.⁷ Congress is not trammled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit. But it is not to be supposed that its acts defining eligibility are arbitrary or unsupported by reasonable considerations of public policy. The State properly may assume that the considerations upon which Congress made such classification are substantial and reasonable. Generally speaking, the natives of European countries are eligible. Japanese, Chinese and Malays are not. Appellants' contention that the state act discriminates arbitrarily against Nakatsuka and other ineligible aliens because of their race and color is without foundation. All persons of whatever color or race who have not declared their intention in good faith to become citizens are prohibited from so owning agricultural lands. Two classes of aliens inevitably result from the naturalization laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act. We agree with the court below (274 Fed. 841, 849) that:

⁶ Act of June 29, 1906, c. 3592, 34 Stat. 596, as amended; Act of June 25, 1910, c. 401, 36 Stat. 829.

⁷ Act of July 14, 1870, c. 254, §7, 16 Stat. 256, as amended; Act of February 18, 1875, c. 80, 18 Stat. 318; *Ozawa v. United States*, 260 U. S. 178; *United States v. Thind*, 261 U. S. 204.

It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the State, and, so lacking, the State may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the State might pass to the ownership or possession of noncitizens.

And we think it is clearly within the power of the State to include nondeclarant eligible aliens and ineligible aliens in the same prohibited class. Reasons supporting discrimination against aliens who may but who will not naturalize are obvious.

Truax v. Raich, *supra*, does not support the appellants' contention. In that case, the Court held to be repugnant to the Fourteenth Amendment an act of the legislature of Arizona making it a criminal offense for an employer of more than five workers at any one time, regardless of kind or class of work, or sex of workers, to employ less than eighty per cent. qualified electors or native born citizens of the United States. In the opinion it was pointed out that the legislation there in question did not relate to the devolution of real property, but that the discrimination was imposed upon the conduct of ordinary private enterprise covering the entire field of industry with the exception of enterprises that were relatively very small. It was said that the right to work for a living in the common occupations of the community is a part of the freedom which it was the purpose of the Fourteenth Amendment to secure.

In the case before us, the thing forbidden is very different. It is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the State. The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the State itself.

The Terraces, who are citizens, have no right safeguarded by the Fourteenth Amendment to lease their land to aliens lawfully forbidden to take or have such lease. The State act is not repugnant to the equal protection clause and does not contravene the Fourteenth Amendment.

3. The State act, in our opinion, is not in conflict with the treaty⁸ between the United States and Japan. The preamble declares it to be "a treaty of commerce and navigation," and indicates that it was entered into for the purpose of establishing the rules to govern commercial intercourse between the countries.

The only provision that relates to owning or leasing land is in the first paragraph of Article I, which is as follows:

The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel and reside in the territories of the other to

⁸ 37 Stat. 1504-1509.

carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

For the purpose of bringing Nakatsuka within the protection of the treaty, the amended complaint alleges that, in addition to being a capable farmer, he is engaged in the business of trading, wholesale and retail, in farm products and shipping the same in intrastate, interstate and foreign commerce, and, instead of purchasing such farm products, he has produced, and desires to continue to produce, his own farm products for the purpose of selling them in such wholesale and retail trade, and if he is prevented from leasing land for the purpose of producing farm products for such trade he will be prevented from engaging in trade and the incidents to trade, as he is authorized to do under the treaty.

To prevail on this point, appellants must show conflict between the State act and the treaty. Each State, in the absence of any treaty provision conferring the right may enact laws prohibiting aliens from owning land within its borders. Unless the right to own or lease land is given by the treaty, no question of conflict can arise. We think that the treaty not only contains no provision giving Japanese the right to own or lease land for agricultural purposes, but, when viewed in the light of the negotiations leading up to its consummation, the language shows that the high contracting parties respectively intended to withhold a treaty grant of that right to the citizens or subjects of either in the territories of the other. The right to "carry on trade" or "to own or lease and occupy houses, manufactories, warehouses and shops," or "to lease land for residential and commercial purposes," or "to do anything incident to or necessary for trade" cannot be said to include the right to own or lease or to have any title to or interest in land for agricultural purposes. The enumeration of rights to own or lease for other specified purposes impliedly negatives the right to own or lease land for these purposes. A careful reading of the treaty suffices in our opinion to negative the claim asserted by appellants that it conflicts with the State act.

But if the language left the meaning of its provisions doubtful or obscure, the circumstances of the making of the treaty, as set forth in the opinion of the District Court (*supra*, 844, 845), would resolve all doubts against the appellants' contention. The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, in accordance with the desire of Japan, the right to own land was not conferred. And it appears that the right to lease land for other than residential and commercial purposes was deliberately withheld by substituting the words of the treaty, "to lease land for residential and commercial purposes" for a more comprehensive clause contained in an earlier draft of the instrument, namely, "to lease land for residential, commercial, industrial, manufacturing and other lawful purposes."

4. The act complained of is not repugnant to section 33 of Article II of the State constitution.

That section provides that "the ownership of lands by aliens . . . is prohibited in this State. . . ." Appellants assert that the proposed lease of farm land for five years is not "ownership," and is not prohibited by that clause of the state constitution and cannot be forbidden by the state legislature. That position is untenable. In *State v. O'Connell*, 121 Wash. 542, a suit for the purpose of escheating to the State an undivided one-half interest in land, or the proceeds thereof, held in trust for the benefit of an alien, a subject of the British Empire, decided since this appeal was taken, the Supreme Court of Washington held that the statute in question did not contravene this provision of the constitution of that State. The question whether or not a State statute conflicts with the constitution of the State is settled by the decision of its highest court. *Carstairs v. Cochran*, 193 U. S. 10, 16. This court "is without authority to review and revise the construction affixed to a State statute as to a state matter by the court of last resort of the State." *Quong Ham Wah Co. v. Industrial Commission*, 255 U. S. 445, 448, and cases cited.

The decree of the District Court is affirmed.

WEBB AND COOLIDGE *v.* O'BRIEN AND INOUE¹

Supreme Court of the United States

Decided November 19, 1923

This is a suit brought by the appellees to enjoin the Attorney General of California and the District Attorney of Santa Clara County from instituting any proceedings to enforce the California Alien Land Law² against them.

¹ 263 U. S. 313.

² Initiative Measure adopted November 2, 1920. Statutes 1921, p. lxxxiii.

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit, and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Section 3 provides that any company, association or corporation a majority of whose members are ineligible aliens or in which a majority of the issued capital stock is owned by such aliens is permitted to acquire, possess, enjoy and convey real property or any interest therein, in the manner and to the extent and for the purposes prescribed by any treaty etc. Hereafter, ineligible aliens may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or

O'Brien is a citizen and resident of California, and owns ten acres of agricultural land in the county of Santa Clara. Inouye is a capable farmer, and is a Japanese subject living in California. O'Brien and Inouye desire to enter into a cropping contract covering the planting, cultivating and harvesting of crops to be grown on the land. They allege that the execution of such a contract is necessary in order that the owner may receive the largest return from the land, and that the alien may receive compensation therefrom; that the Attorney General and District Attorney have threatened to and convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty . . . and not otherwise.

Section 4 provides that no ineligible alien and no company, association or corporation mentioned in section 3 may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of the act. The superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court that facts exist which would make the guardian ineligible to appointment in the first instance.

Section 5 (a). The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an ineligible alien or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it. . . .

(b). Annually every such trustee must file a verified written report showing: . . .

(3). An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof is required of such trustee.

Section 6 provides for sale and distribution of proceeds when, by reason of the provisions of the act, heir cannot take real property or membership or shares of stock in a company, association or corporation.

Section 7 provides for the escheat of property acquired in fee by any ineligible alien and that no alien, company, association or corporation mentioned in section 2 or section 3 hereof shall hold for a longer period than two years, the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

Section 8. Any leasehold or other interest in real property less than a fee, hereafter acquired in violation of the provisions of this act by any ineligible alien or by any company, association or corporation mentioned in section 3 of this act, shall escheat to the State of California. . . . Any share of stock or interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section 3 of this act shall escheat to the state of California.

Section 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an ineligible alien is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

Section 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

will enforce the act against them if they execute the contract, and will forfeit or attempt to forfeit the land by an escheat proceeding, and will prosecute them criminally for violating the act. They aver that the act is so drastic, and the penalties for its violation are so great that neither of them may execute the contract even for the purpose of testing its validity and its application thereto; and that, unless the court shall determine the validity of the act and its application, they will be compelled to submit to it, whether valid or invalid, and to the 'appellants' interpretation of it, and so be deprived of their property without due process of law and denied the equal protection of the laws in contravention of the Fourteenth Amendment.

Appellees applied for an interlocutory injunction. The matter was heard by three judges, as provided in section 266 of the Judicial Code. The injunction was granted, and the Attorney General and District Attorney appealed.

O'Brien, who is a citizen, has no legal right to enter into the proposed contract with Inouye, who is an ineligible Japanese alien, unless the latter is permitted by law to make and carry out such a contract. At common law, aliens, though not permitted to take land by operation of law, may take by the act of the parties; but they have no capacity to hold against the state, and the land so taken may be escheated to the state. See *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch. 603, 609, 619, 620; *Gouverneur's Heirs v. Robertson*, 11 Wheaton 332, 355; *Phillips v. Moore*, 100 U. S. 208, 212; *Atlantic & Pacific Railroad v. Mingus*, 165 U. S. 413, 431. In the absence of a treaty to the contrary, the State has power to deny to aliens the right to own land within its borders. *Terrace et al. v. Thompson*, 263 U. S. 197; *Hauenstein v. Lynham*, 100 U. S. 483, 484, 488; *Blythe v. Hinckley*, 127 Cal. 431, affirmed 180 U. S. 333, 340; In the Matter of Okahara, decided June 28, 1923, 216 Pac. 614. The provision of the act which limits the privilege of ineligible aliens to acquire real property or any interest therein to that prescribed by treaty is not in conflict with the Fourteenth Amendment. *Terrace et al. v. Thompson*, *supra*; *Porterfield v. Webb*, 263 U. S. 225; In the Matter of Okahara, *supra*. The treaty between the United States and Japan (37 Stat. 1504-1509) does not confer upon the citizens or subjects of either in the territories of the other the right to acquire, possess or enjoy lands for agricultural purposes. *Terrace et al. v. Thompson*, *supra*; In the Matter of Okahara, *supra*.

By the proposed cropping contract, Inouye is given the right for a term of four years to plant, cultivate and harvest crops—berries and vegetables—on the land, and to be free from interference by the owner, who undertakes to protect him during the term against interference by any other person. He is entitled to housing for himself, and is granted the right to employ others to work on the land, and to give to them free ingress and egress and the right to live on the land. He is entitled to one-half of all crops grown on the land during the term, to be divided after they are harvested and be-

fore removal from the land, and is given a reasonable time after the expiration of the term to remove his share of the crops. He is required to accept his share of the crops as reimbursement for expenditures made to carry on the farming operations, and as his only return from the undertaking. Assuming that the proposed arrangement does not amount to a leasing or to a transfer of an interest in real property, and that it includes the elements of a contract of employment (In the Matter of Okahara, *supra*), we are of opinion that it is more than a contract of employment; and that, if executed, it will give to Inouye a right to use and to have or share in the benefit of the land for agricultural purposes. And this is so, notwithstanding other clauses of the contract to the effect that the general possession of the land is reserved to the owner, that the cropper shall have no interest or estate whatever in the land, that he is given one-half of all crops grown as compensation for his services and labor, and that division of the crops is to be made after they are harvested and before their removal from the land.

The treaty grants liberty to own or lease and occupy houses, manufactories, warehouses and shops, and to lease land for residential and commercial purposes.³ Section 2 of the act extends the privilege to acquire, possess, enjoy and transfer real property or any interest therein only in the manner and to the extent and for the purposes prescribed in the treaty. The treaty gives no permission to enjoy, use or have the benefit of land for agricultural purposes. The privileges granted by the act are carefully limited to those prescribed in the treaty. The act as a whole evidences legislative intention that ineligible aliens shall not be permitted to have or enjoy any privilege in respect of the use or the benefit of land for agricultural purposes. And this view is supported by the circumstances and negotiations leading up to the making of the treaty. See *Terrace et al. v. Thompson*, *supra*; *Same v. Same*, 274 Fed. 841, 844, 845. As applied to this case, the act may be read thus: "Ineligible aliens may own or lease houses, manufactories, warehouses and shops, and may lease land for residential and commercial purposes. These things, but no possession or enjoyment of land otherwise, are permitted."

The term of the proposed contract, the measure of control and dominion over the land which is necessarily involved in the performance of such a contract, the cropper's right to have housing for himself and to have his employees live on the land, and his obligation to accept one-half the crops as his only return for tilling the land clearly distinguish the arrangement from one of mere employment. The case differs from *Truax v. Raich*, 239 U. S. 33.

³ Article I. The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

In that case, a statute of Arizona making it a criminal offense for an employer of more than five workers, regardless of kind or class of work or sex of workers, to employ less than eighty per cent. native born citizens of the United States was held to infringe the right, secured by the Fourteenth Amendment, of a resident alien to work in a common occupation—cooking in a restaurant. The right to make and carry out cropper contracts such as that before us is not safeguarded to ineligible aliens by the Constitution. A denial of it does not deny the ordinary means of earning a livelihood or the right to work for a living. The practical result of such contract is that the cropper has use, control and benefit of land for agricultural purposes substantially similar to that granted to a lessee. Conceivably, by the use of such contracts, the population living on and cultivating the farm lands might come so be made up largely of ineligible aliens. The allegiance of the farmers to the state directly affects its strength and safety. *Terrace et al. v. Thompson, supra*. We think it within the power of the state to deny to ineligible aliens the privilege so to use agricultural lands within its borders.

The decision of the Supreme Court of California in *In the Matter of Okahara, supra*, a *habeas corpus* case, does not support the appellees' contention. In that case an ineligible Japanese was held on a warrant charging him with conspiracy to effect a transfer of real property in violation of section 10 of the Alien Land Law. The gravamen of the offense charged was that Okahara, in furtherance of the conspiracy, executed a contract with another, whereby the latter transferred to him for a term of five years an interest in 20 acres of agricultural land. The only question before the court in that case was whether the contract amounted to a transfer of real property or of an interest therein in violation of section 10. The court said: "The instrument before us cannot be characterized as a lease or transfer of any interest in real property because it lacks many of the essential elements of a lease, while on the other hand it bears all the characteristics of an agreement of hiring. But if it cannot be said to be an agreement of employment pure and simple it cannot under any rule of construction be held to be more than a cropping contract." After referring to the terms of the contract and reviewing authorities, it said: "The argument that the law forbids the making of a contract of employment or agreement to till the soil on shares can only be sustained by adopting the theory that the particular agreement under consideration transfers an interest in land." The court held that the contract did not violate section 10 and discharged Okahara. The contract in that case differs in important particulars from the one before us; but in the view we take of this case, we need not determine whether, within the meaning of the act, the contract between O'Brien and Inouye, if executed, would effect a transfer of an interest in real property. The question in this case is not whether the proposed contract is prohibited by section 10, but it is whether appellees have shown that they have a right under the Constitution or treaty to make and carry out the contract, and are entitled to an in-

terlocutory injunction against the officers of the state. A negative answer must be given.

The privilege to make and carry out the proposed cropping contract, or to have the right to the possession, enjoyment and benefit of land for agricultural purposes as contemplated and provided for therein, is not given to Japanese subjects by the treaty. The act denies the privilege because not given by the treaty. No constitutional right of the alien is infringed. It therefore follows that the injunction should have been denied.

The order appealed from is reversed.

FRICK AND SATOW *v.* WEBB AND BRADY

*Supreme Court of the United States*¹

Decided November 19, 1923

This is a suit brought by the appellants to enjoin the above named Attorney General and District Attorney from enforcing the California Alien Land Law,² submitted by the initiative and approved by the electors, November 2, 1920, on the grounds that it is in conflict with the due process and equal protection clauses of the Fourteenth Amendment, and with the treaty between the United States and Japan.

Appellants are residents of California. Frick is a citizen of the United States and of California. Satow was born in Japan of Japanese parents and is a subject of the Emperor of Japan. Frick is the owner of 28 shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of California, that owns 2200 acres of farm land in that State. Frick desires to sell the shares to Satow and Satow desires to buy them. By the complaint, it is alleged in substance that the appellees have threatened to and will enforce the act against appellants if Frick sells such stock to Satow, and will institute proceedings to escheat such shares to the State as provided in the act; that, but for the provisions of the act and such threats, Frick would sell and Satow would buy the stock. And it is averred that the act is so drastic and the penalties attached to its violation are so great that appellees are deterred from carrying out the sale, and that unless the court shall determine its validity in this suit, appellants will be compelled to submit to it whether valid or invalid.

Appellants applied for an interlocutory injunction to restrain appellees during the pendency of the suit from instituting any proceedings to enforce the act against appellants. The application was heard by three judges as

¹ 263 U. S. 326.

² The substance of the portions of the act which are material in this case is printed in the margin of *Webb v. O'Brien*, decided this day.

provided in section 266 of the Judicial Code. The motion was denied, and the case is here on appeal from that order.

In *Porterfield v. Webb* (263 U. S. 225), and *Webb v. O'Brien*, decided this day, we held that the act does not conflict with the Fourteenth Amendment or with the treaty between the United States and Japan. In the case first mentioned, we held that the act prohibits the leasing of agricultural land by citizens of the United States to a Japanese alien, and in the latter that it prohibits the making of a cropping contract between a citizen and a Japanese alien.

The treaty does not grant permission to the citizens or subjects of either of the parties in the territories of the other to own, lease, use or have the benefit of lands for agricultural purposes, and, when read in the light of the circumstances and negotiations leading up to its consummation, the language shows that the parties respectively intended to withhold a treaty grant of that privilege. *Terrace v. Thompson*, *supra*; *Same v. Same*, 274 Fed. 841, 844, 845. The applicable provision of section 3 of the act is: Hereafter all ineligible aliens "may . . . acquire shares of stock in any . . . corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty . . . and not otherwise." The provisions of the act were framed and intended for general application and to limit the privileges of all ineligible aliens in respect of agricultural lands to those prescribed by treaty between the United States and the nation or country of which such alien is a citizen or subject. The State has power, and the act evidences its purpose to deny to ineligible aliens permission to own, lease, use or have the benefit of lands within its borders for agricultural purposes. *Webb v. O'Brien*, *supra*. "As the State has the power . . . to prohibit, it may adopt such measures as are reasonably appropriate or needful to render exercise of that power effective." *Crane v. Campbell*, 245 U. S. 304, 307, and cases cited; *Hebe Company v. Shaw*, 248 U. S. 297, 303. It may forbid indirect as well as direct ownership and control of agricultural land by ineligible aliens. The right "to carry on trade" given by the treaty does not give the privilege to acquire the stock above described. To read the treaty to permit ineligible aliens to acquire such stock would be inconsistent with the intention and purpose of the parties. We hold that the provision of section 3 above referred to does not conflict with the Fourteenth Amendment or with the treaty.

The order appealed from is affirmed.

MIXED CLAIMS COMMISSION, UNITED STATES AND
GERMANY *

OPINION IN THE LUSITANIA CASES

NOVEMBER 1, 1923

PARKER, Umpire, delivered the opinion of the Commission, the American and German Commissioners concurring in the conclusions.

These cases grow out of the sinking of the British ocean liner *Lusitania*, which was torpedoed by a German submarine off the coast of Ireland May 7, 1915, during the period of American neutrality. Of the 197 American citizens aboard the *Lusitania* at that time, sixty-nine were saved and 128 lost. The circumstances of the sinking are known to all the world, and as liability for losses sustained by American nationals was assumed by the Government of Germany through its note of February 4, 1916, it would serve no useful purpose to rehearse them here.

Applying the rules laid down in Administrative Decisions Nos. I and II handed down this date,¹ the Commission finds that Germany is financially obligated to pay to the United States all losses suffered by American nationals, stated in terms of dollars, where the claims therefor have continued in American ownership, which losses have resulted from death or from personal injury or from loss of, or damage to, property, sustained in the sinking of the *Lusitania*.

This finding disposes of this group of claims, save that there remain to be considered (1) issues involving the nationality of each claimant affecting the Commission's jurisdiction and (2) the measure of damages to be applied to the facts of each case.

In this decision rules applicable to the measure of damages in *death cases* will be considered. In formulating such rules and determining the weight to be given to the decisions of courts and tribunals dealing with this subject, it is important to bear in mind the basis of recovery in death cases in the jurisdictions announcing such decisions.

At common law there existed no cause of action for damages caused by the death of a human being. The right to maintain such actions has, however, been long conferred by statutes enacted by Great Britain and by all of the

* For the personnel of the Commission, see the last number of the JOURNAL (Jan. 1924) p. 175.

¹ Reference is made to Administrative Decision No. I for the definition of the terms used herein. See this JOURNAL, January, 1924, p. 175.

We are here dealing with a group of cases all growing out of a single catastrophe. As it is manifestly of paramount importance that the same rules of decision shall govern the disposition of each and all of them, whether disposed of by agreement between the two Commissioners or in the event of their disagreement by the Umpire, this opinion announcing such rules is, at the request of the two Commissioners, prepared by the Umpire, both Commissioners concurring in the conclusions. The principles and rules here laid down will, where applicable, govern the American and German Agents and their respective counsel in the preparation and presentation of all claims.

American States. The German Code expressly recognizes liability for the taking of life.² These legislative enactments vary in their terms to such an extent that there can not be evolved from them and the decisions of the courts construing them any composite uniform rules governing this branch of the law. Such statutes and decisions as well as the other governing principles set out in this Commission's Administrative Decision No. II will, however, be considered in determining the applicable rules governing the measuring of damages in death cases.

The statutes enacted in common-law jurisdictions conferring a cause of action in death cases where none before existed have frequently limited by restrictive terms the rules for measuring damages in such cases. The tendency, however, of both statutes and decisions is to give such elasticity to these restrictive rules as to enable courts and juries in applying them to the facts of each particular case to award full and fair compensation for the injury suffered and the loss sustained.³ The statutes of several States of the American Union authorize juries to award such damages as are "fair and just" or "proportionate to the injury." Under such statutes the decisions of the courts give to the juries much broader latitude in assessing damages than those of other states where the statutes expressly limit them to so-called "pecuniary injuries,"⁴ which is a term much misunderstood.

² Section 823. See also Huebner's *History of Germanic Private Law*, 1918, pages 578-579, and Schuster's *Principles of German Civil Law*, 1907, sections 284-286.

³ *Nohrden v. Northeastern Railroad Co.*, 1900, 59 South Carolina Reports 87, 105-108, 37 Southeastern Reporter 228, 238-240; *Stuckey v. Atlantic Coast Line Railroad Co.*, 1901, 60 South Carolina Reports 237, 252-253; *Parker v. Crowell & Spencer Lumber Co.*, 1905, 115 Louisiana Reports 463, 468, 39 Southern Reporter 445, 446; *Bourg v. Brownell-Drews Lumber Co.*, 1908, 120 Louisiana Reports 1009, 1022-1027, 45 Southern Reporter 972, 977-979; *Seaboard Air Line Railway v. Moseley*, 1910, 60 Florida Reports 136, 189; *Peters v. Southern Pacific Co.*, 1911, 160 California Reports 48, 69-71; *Underwood v. Gulf Refining Co.*, 1911, 128 Louisiana Reports 968, 987-1003, 55 Southern Reporter 641, 646-653; *Johnson v. Industrial Lumber Co.*, 1912, 131 Louisiana Reports 897, 910, 60 Southern Reporter 608, 612.

⁴ *Mynning v. The Detroit, Lansing & Northern Railroad Co.*, 1886, 59 Michigan Reports 257, 261-262, 26 Northwestern Reporter 514, 516-517; *Simmons v. McConnell*, 1890, 86 Virginia Reports 494, 496-497, 10 Southeastern Reporter 838, 839; *The Ohio and Mississippi Railway Co. v. Wangelin*, 1894, 152 Illinois Reports 138, 142, 38 Northeastern Reporter 760, 761; *Turner v. Norfolk & W. R. Co.*, 1895, 40 West Virginia Reports 675, 688-689, 693-695, 22 Southeastern Reporter 83, 87, 89; *Strother v. South Carolina & Georgia Railroad Co.*, 1896, 47 South Carolina Reports 375, 383-384, 25 Southeastern Reporter, 272, 274; *Mason v. Southern Railway Co.*, 1900, 58 South Carolina Reports 70, 77, 36 Southeastern Reporter 440, 442; *Parker v. Crowell & Spencer Lumber Co.*, 1905, 115 Louisiana Reports 463, 468, 39 Southern Reporter 445, 446; *Norfolk & Western Railway Co. v. Chestwood's Administratrix*, 1905, 103 Virginia Reports 356, 364-365, 49 Southeastern Reporter 489, 491-492; *Butte Electric Ry. Co. v. Jones*, 1908, C. C. A., 164 Federal Reporter 308, 311, 18 Lawyers' Reports Annotated (New Series) 1205, 1208; *Brennen v. Chicago & Carterville Coal Co.*, 1909, 147 Illinois Appellate Court Reports 263, 270-273; *Chesapeake & O. Ry. Co. v. Hawkins* (West Virginia), 1909, C. C. A., 174 Federal Reporter 597, 601-602, 98 Circuit Court of Appeals 443, 447-448.

In most of the jurisdictions where the civil law is administered and where the right of action for injuries resulting in death has long existed independent of any code or statute containing restrictions on rules for measuring damages, the courts have not been hampered in so formulating such rules and adapting them to the facts of each case as to give complete compensation for the loss sustained.

It is a general rule of both the civil and the common law that every invasion of private right imports an injury and that for every such injury the law gives a remedy. Speaking generally, that remedy must be commensurate with the injury received. It is variously expressed as "compensation," "reparation," "indemnity," "recompense," and is measured by pecuniary standards, because, says Grotius,⁵ "money is the common measure of valuable things."

In death cases the right of action is for the loss sustained by the *claimants*, not by the estate. The basis of damages is, not the physical or mental suffering of deceased or his loss or the loss to his estate, but the losses resulting to claimants from his death. The enquiry then is: What amount will compensate claimants for such losses?

Bearing in mind that we are not concerned with any problems involving the punishment of a wrongdoer but only with the naked question of fixing the amount which will compensate for the wrong done, our formula expressed in general terms for reaching that end is: Estimate the amounts (a) which the decedent, had he not been killed, would probably have contributed to the claimant, add thereto (b) the pecuniary value to such claimant of the deceased's personal services in claimant's care, education, or supervision, and also add (c) reasonable compensation for such mental suffering or shock, if any, caused by the violent severing of family ties, as claimant may actually have sustained by reason of such death. The sum of these estimates, reduced to its present cash value, will generally represent the loss sustained by claimant.

In making such estimates there will be considered, among other factors, the following:

(a) the age, sex, health, condition and station in life, occupation, habits of industry and sobriety, mental and physical capacity, frugality, earning capacity and customary earnings of the deceased and the uses made of such earnings by him;

(b) the probable duration of the life of deceased but for the fatal injury, in arriving at which standard life-expectancy tables and all other pertinent evidence offered will be considered;

(c) the reasonable probability that the earning capacity of deceased, had he lived, would either have increased or decreased;

⁵ *The Rights of War and Peace*, by Hugo Grotius, Whewell translation, 1853 (hereinafter cited as "Grotius"), Book II, Chapter XVII, Section XXII; Sedgwick on *Damages*, 9th (1912) edition (hereinafter cited as "Sedgwick"), section 30.

(d) the age, sex, health, condition and station in life, and probable life expectancy of each of the claimants;

(e) the extent to which the deceased, had he lived, would have applied his income from his earnings or otherwise to his personal expenditures from which claimants would have derived no benefits;

(f) in reducing to their present cash value contributions which would probably have been made from time to time to claimants by deceased, a 5% interest rate and standard present-value tables will be used;

(g) neither the physical pain nor the mental anguish which the *deceased* may have suffered will be considered as elements of damage;

(h) the amount of insurance on the life of the deceased collected by his estate or by the claimants will not be taken into account in computing the damages which claimants may be entitled to recover;

(i) no exemplary, punitive, or vindictive damages can be assessed.

The foregoing statement of the rules for measuring damages in death cases will be applied by the American Agent and the German Agent and their respective counsel in the preparation and submission of all such cases. The enumeration of factors to be taken into account in assessing damages will not be considered as exclusive of all others. When either party conceives that other factors should be considered, having a tendency either to increase or decrease the *quantum* of damages, such factors will be called to the attention of the Commission in the presentation of the particular case.

Most of the elements entering into the rules here expressed for measuring damages, and the factors to be taken into account in applying them, are so obviously sound and firmly established by both the civil and common law authorities as to make further elaboration wholly unnecessary. As counsel for Germany, however, very earnestly contends that the mental suffering of a claimant does not constitute a recoverable element of damage in death cases, and also contends that life insurance paid claimants on the happening of the death of deceased should be deducted in estimating the claimant's loss, we will state the reasons why we are unable to adopt either of these contentions. The American counsel, with equal earnestness, contends that exemplary, punitive, and vindictive damages should be assessed against Germany for the use and benefit of each private claimant. For the reasons hereinafter set forth at length this contention is rejected.

Mental suffering.—The legal concept of damages is judicially ascertained compensation for wrong. The compensation must be adequate and balance as near as may be the injury suffered. In many tort cases, including those for personal injury and for death, it is manifestly impossible to compute mathematically or with any degree of accuracy or by the use of any precise formula the damages sustained, involving such inquiries as how long the deceased would probably have lived but for the fatal injury; the amount he would have earned, and of such earnings the amount he would have contributed to each member of his family; the pecuniary value of his supervision

over the education and training of his children; the amount which will reasonably compensate an injured man for suffering excruciating and prolonged physical pain; and many other inquiries concerning elements universally recognized as constituting recoverable damages. This, however, furnishes no reason why the wrongdoer should escape repairing his wrong or why he who has suffered should not receive reparation therefor measured by rules as nearly approximating accuracy as human ingenuity can devise. To deny such reparation would be to deny the fundamental principle that there exists a remedy for the direct invasion of every right.

Mental suffering is a fact just as real as physical suffering, and susceptible of measurement by the same standards. The interdependency of the mind and the body, now universally recognized, may result in a mental shock producing physical disorders. But quite apart from any such result, there can be no doubt of the reality of mental suffering, of sickness of mind as well as sickness of body, and of its detrimental and injurious effect on the individual and on his capacity to produce. Why, then, should he be remediless for this injury? The courts of France under the provisions of the Code Napoleon have always held that mental suffering or "prejudice morale" is a proper element to be considered in actions brought for injuries resulting in death. A like rule obtains in several American States, including Louisiana, South Carolina, and Florida.⁶ The difficulty of measuring mental suffering or loss of mental capacity is conceded, but the law does not refuse to take notice of such injury on account of the difficulty of ascertaining its degree.

On careful analysis it will be found that decisions announcing a contrary rule by some of the American courts are measurably influenced by the restrictions imposed by the language of the statutes creating the right of action for injuries resulting in death. As hereinafter pointed out, these very restrictions have in some instances driven the courts to permit the juries to award as exemplary damages what were in truth compensatory damages for mental suffering, rather than leave the plaintiff without a remedy for a real injury sustained.

Mental suffering to form a basis of recovery must be real and actual, rather than purely sentimental and vague.⁷

Insurance.—Counsel for Germany insist that in arriving at claimants' net loss there should be deducted from the present value of the contributions which the deceased would probably have made to claimants had he lived all payments made to claimants under policies of insurance on the life of de-

⁶ *Nohrden v. Northeastern Railroad Co.*, 1900, 59 South Carolina Reports 87, 105-108, 37 Southeastern Reporter 228, 238-240; *Stuckey v. Atlantic Coast Line Railroad Co.*, 1901, 60 South Carolina Reports 237, 253; *Bourg v. Brownell-Drews Lumber Co.*, 1908, 120 Louisiana Reports 1009, 1022-1026, 45 Southern Reporter 972, 977-978; *Seaboard Air Line Railway v. Moseley*, 1910, 60 Florida Reports 186, 189-190; *Underwood v. Gulf Refining Co.*, 1911, 128 Louisiana Reports 869, 986, 990-1003; *Johnson v. Industrial Lumber Co.*, 1912, 131 Louisiana Reports 897, 908-909.

⁷ Sedgwick, sec. 46a.

ceased. The contention is opposed to all American decisions and the more recent decisions of the English courts. The various reasons given for these decisions are, however, for the most part inconclusive and unsatisfactory. But it is believed that the contention here made by the counsel for Germany is based upon a misconception of the essential nature of life insurance and the relations of the beneficiaries thereto.

Unlike marine and fire insurance, a life insurance contract is not one of indemnity, but a contract absolute in its terms for the payment of an amount certain on the happening of an event certain—death—at a time uncertain. The consideration for the claimants' contract rights is the premiums paid. These premiums are based upon the risk taken and are proportioned to the amount of the policy. The contract is in the nature of an investment made either by, or in behalf of, the beneficiaries. The claimants' rights under the insurance contracts existed prior to the commission of the act complained of, and prior to the death of deceased. Under the terms of the contract these rights were to be exercised by claimants upon the happening of a certain event. The mere fact that the act complained of hastened that event can not inure to Germany's benefit, as there was no uncertainty as to the happening of the event, but only as to the *time* of its happening. Sooner or later payment must be made under the insurance contract. Such payment of insurance, far from springing from Germany's act, is entirely foreign to it. If it be said that the acceleration of death secures to the claimants *now* what might otherwise have been paid to others had deceased survived claimants, and that therefore claimants may *possibly* have benefited through Germany's act, the answer is that the law will not for the benefit of the wrongdoer enter the domain of speculation and consider the probability of probabilities in order to offset an absolute and certain contract right against the uncertain damages flowing from a wrong.

Use of life-expectancy and present-value tables.—Ordinarily the facts to which must be applied the rules of law in measuring damages in death cases lie largely in the future. It results that, absolute knowledge being impossible, the law of probabilities and of averages must be resorted to in estimating damages, and these preclude the possibility of making any precise computations or mathematical calculations. As an aid—but solely as an aid—in estimating damages in this class of cases, the Commission will consider the standard life-expectancy and present-value tables. These will be used not as absolute guides but in connection with other evidence, such as the condition of the health of deceased, the risks incident to his vocation, and any other circumstances tending to throw light on the probable length of his life but for the act of Germany complained of. To the extent that happenings subsequent to the death of deceased make certain what was before uncertain, to such extent the rules of probabilities will be discarded.

Neither will we lose sight of the fact that life tables are based on statistics of the length of life of individuals, not upon the duration of their physical or

mental capacity or of their earning powers. In using such tables it will be borne in mind that the present value of the probable earnings of deceased depends on many more unknowable contingencies than does the present value of a life annuity or dower. Included among these contingencies are possible and probable periods of illness, periods of unemployment even when well, and various degrees of disability arising from gradually increasing age. The weight to be given to such tables will, therefore, be determined by the Commission in the light of the facts developed in each particular case.

Exemplary damages.—American counsel with great earnestness insists that exemplary, or, as they are frequently designated, punitive and vindictive, damages should be assessed by this Commission against Germany in behalf of private claimants. Because of the importance of the question presented the nature of exemplary damages will be examined and the Commission's reasons for declining to assess such damages will be fully stated.

Undoubtedly the rule permitting the recovery of exemplary damages as such is firmly entrenched in the jurisprudence of most of the States of the American Union, although it has been repudiated by the courts of several of them and its soundness on principle is challenged by some of the leading American text writers.⁸

The reason for the rule authorizing the imposition of exemplary in addition to full reparation or compensatory damages is that they are justified "by way of punishing the guilty, and as an example to deter others from offending in like manner."⁹ The source of the rule is frequently traced to a remark alleged to have been made by Lord Chief Justice Pratt (afterwards Lord Camden) in instructing a jury (*italics ours*) that:¹⁰

Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a *proof of the detestation of the jury to the action itself*.

That such a charge was ever in fact given has been questioned.¹¹ However this may be, this alleged instruction has been quoted and requoted by the courts of England and of America as authority for the awarding of exemplary damages where the tort complained of has been wilfully or wantonly or maliciously inflicted.

In some of the earlier cases the awards of exemplary damages were sustained "for example's sake" and "to prevent such offense in the future,"

⁸ *Fay v. Parker*, 1873, 53 New Hampshire Reports 342; Sedgwick, sec. 354; Greenleaf on *Evidence*, 15th (1892) edition, Volume II, section 253, 254, 266, and 267.

⁹ *Lake Shore & Michigan Southern Railway Co. v. Prentice*, 1893, 147 United States Reports 101, 107.

¹⁰ *Wilkes v. Wood*, 1763, 19 Howell's State Trials (1816) 1153, 1167, Loft's Reports (1790), pages 1 and 19 of first case.

¹¹ Sedgwick, sec. 350.

and again "to inflict damages for example's sake and by way of punishing the defendant." In one early New York case¹² it was said:

We concede that smart money allowed by a jury, and a fine imposed at the suit of the people, depend on the same principle. Both are penal, and intended to deter others from the commission of the like crime.

In our opinion the words exemplary, vindictive, or punitive as applied to *damages* are misnomers. The fundamental concept of "damages" is satisfaction, reparation for a *loss* suffered; a judicially ascertained *compensation* for wrong.¹³ The remedy should be commensurate with the loss, so that the injured party may be made whole.¹⁴ The superimposing of a penalty in addition to full compensation and naming it damages, with the qualifying word exemplary, vindictive, or punitive, is a hopeless confusion of terms, inevitably leading to confusion of thought. Many of the American authorities lay down the rule that where no actual damage has been suffered no exemplary damages can be allowed, giving as a reason that the latter are awarded, not because the *plaintiff* has any *right* to recover them, but because the *defendant* deserves punishment for his wrongful acts; and that, as the plaintiff can not maintain an action merely to inflict punishment upon a supposed wrongdoer, if he has no cause of action independent of a supposed right to recover exemplary damages, he has no cause of action at all.¹⁵ It is apparent that the theory of the rule is not based upon any *right* of the *plaintiff* to receive the award assessed against the defendant, but that the *defendant* should be *punished*. The more enlightened principles of government and of law clothe the state with the sole power to punish but insure to the individual full, adequate, and complete compensation for a wrong inflicted to his detriment.¹⁶

An examination of the American authorities leads to the conclusion that the exemplary damage rule owes its origin and growth, to some extent at least, to the difficulties experienced by judges in tort cases of clearly defining

¹² *Cook v. Ellis*, 1844, 6 Hill's (New York) Reports 466, 467.

¹³ Sedgwick, sec. 571a.

¹⁴ Grotius, Book II, Chapter XVII, section X; Blackstone's *Commentaries*, Book II, Chapter 29, section VII, paragraph 2 (*page 438); Sedgwick, section 29.

¹⁵ *Schippel v. Norton*, 1888, 38 Kansas Reports 567, 572; *Meighan v. Birmingham Terminal Co.*, 1910, 165 Alabama Reports 591, 599.

¹⁶ Vattel's *Law of Nations*, Chitty edition with notes by Ingraham, 1852 (1857), (hereinafter cited as "Vattel") Book I, section 169, where it is said: "Now, when men unite in society,—as the society is thenceforward charged with the duty of providing for the safety of its members, the individuals all resign to it their private right of punishing. To the whole body, therefore, it belongs to avenge private injuries, while it protects the citizens at large. And as it is a moral person, capable also of being injured, it has a right to provide for its own safety, by punishing those who trespass against it;—that is to say, it has a right to punish public delinquents. Hence arises the right of the sword, which belongs to a nation, or to its conductor. When the society use it against another nation, they make war; when they exert it in punishing an individual, they exercise vindictive justice."

in their instructions to juries the different factors which may be taken into account and readily applied by them in assessing the *quantum* of damages which a plaintiff may recover. It is difficult to lay down any rule for measuring injury to the feelings, or humiliation or shame, or mental suffering, and yet it frequently happens that such injuries *are very real and call for compensation as actual damages* as much as physical pain and suffering and many other elements which, though difficult to measure by pecuniary standards, are, nevertheless, universally considered in awarding compensatory damages. The trial judges, following the lead of Lord Camden,¹⁷ have found it easier to permit the juries to award plaintiffs in the way of damages a penalty assessed against defendants guilty of wilful, malicious, or outrageous conduct toward the plaintiffs, rather than undertake to formulate rules to enable the juries to measure in pecuniary terms the extent of the actual injuries.¹⁸ In cases cited and numerous others, the damages dealt with and designated by the court as "exemplary" were in their nature purely compensatory and awarded as reparation for actual injury sustained.

That one injured is, under the rules of international law, entitled to be compensated for an injury inflicted resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation, there can be no doubt, and such compensation should be commensurate to the injury. Such damages are very real, and the mere fact that they are difficult to measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated therefor as compensatory damages, but not as a penalty. The tendency of the decisions and statutes of the several American States seems to be to broaden the scope of the elements to be considered in assessing actual and compensatory damages, with the corresponding result of narrowing the application of the exemplary damages rule.¹⁹

¹⁷ Wilkes v. Wood, note 10, *supra*.

¹⁸ Boydan v. Haberstumpf, 1901, 129 Michigan Reports 137, where it was held (page 140; italics ours) that the term "exemplary damages," as employed in Michigan, "has generally been understood to mean an increased award of damages in view of the supposed *aggravation* of the injury to the feelings by the wanton or reckless act of the defendant," and that "It has never been the policy of the court to permit juries to award capiously any sum which may appear just to them, *by way of punishment* to the offender, but rather to award a sum in addition to the actual proven damages as what, in their judgment, constitutes a *just measure of compensation* for injury to feelings, in view of the circumstances of each particular case."

Pegram v. Stortz, 1888, 31 West Virginia Reports 220, 229, 242-243; Gillingham v. Ohio River Railroad Co., 1891, 35 West Virginia Reports 588, 599-600; Levy v. Fleischner, Mayer & Co., 1895, 12 Washington Reports 15, 17-18.

¹⁹ See the cases cited in note 6 above. In the case cited from 128 Louisiana Reports the court said, at page 992, "the idea that damages allowed for mental suffering are exemplary, punitive, or vindictive in their character has been very generally abandoned, and they are now recognized by this court and other courts as actual and compensatory."

The industry of counsel has failed to point us to any money award by an international arbitral tribunal where exemplary, punitive or vindictive damages have been assessed against one sovereign nation in favor of another presenting a claim in behalf of its nationals.²⁰ Great stress is laid by counsel on the *Moses Moke* case²¹ which arose under the convention between the United States and Mexico of July 4, 1868. *Moke*, an American citizen, was subjected to a day's imprisonment to "force" him to "loan" \$1,000. He sought to recover the amount of the "loan" and damages. The American Commissioner Wadsworth speaking for the Commission said:

We wish to condemn the practice of forcing loans by the military, and think an award of \$500 for 24 hours' imprisonment will be sufficient. If larger sums in damages, in such cases, were needed to vindicate the right of individuals to be exempt from such abuses, we would undoubtedly feel required to give them.

This language is the nearest approach to a recognition of the doctrine of exemplary damages that we have found in any reported decision of a mixed arbitral tribunal, but we do not regard the decision in this case as a recognition of this doctrine. On the contrary, an award of \$500 for the humiliation

of *International Arbitral Law and Procedure*, by Jackson H. Ralston, 1910, section 369, where he says: "While there is little doubt that in many cases the idea of punishment has influenced the amount of the award, yet we are not prepared to state that any commission has accepted the view that it possessed the power to grant anything save compensation."

Borchard's *The Diplomatic Protection of Citizens Abroad* (1915) (1922), section 174, makes substantially the same statement in these words: "Arbitral commissions, while often apparently taking into consideration the seriousness of the offense and the idea of punishment in fixing the amount of an award, have generally regarded their powers as limited to the granting of compensatory, rather than exemplary, damages."

Dr. Lieber, Umpire of the Commission under the convention of July 4, 1868, between the United States and Mexico, in awarding the sum of \$4,000 on an \$85,000 claim, said (page 4311, Volume IV, of Moore's *History and Digest of the International Arbitrations to which the United States has been a Party*, 1898, hereinafter cited as "*Moore's Arbitrations*"): "Nor can these high damages be explained as exemplary damages. Our commission has no punitive mission, nor is there any offense to be punished."

See also opinion of Umpire Bertinatti in the case of Ogden, Administrator of the estate of Isaac Harrington, in which an award of \$1,000 was made on an original demand of \$160,000 where the claim was made that an American citizen was treated oppressively and with great indignity by Costa Rica. *Moore's Arbitrations*, page 1566.

IV. *Moore's Arbitrations*, 341.

Counsel also lays much stress on the language used by Umpire Duffield of the German-Venezuelan Mixed Claims Commission in the Metzger Case (pages 578-580, *Venezuelan Arbitrations of 1903*, report by Jackson H. Ralston, 1904, hereinafter cited as "*Venezuelan Arbitrations, 1903*"), where it is said (page 580, italics ours): "Neither can anything be allowed in the way of punitive or exemplary damages against Venezuela, because it appears, as above stated, that the general commanding the army promptly took action against the offender and punished him by imprisonment. Clearly this is *dictum*. The case was apparently correctly decided and there was no reason for giving any careful consideration to the right of the commission to go further than award compensatory damages."

and inconvenience suffered by this American citizen for the outrageous treatment accorded him by the Mexican authorities can hardly be said to be adequate compensation. Certainly the award has in it none of the elements of punishment, nor can it be evoked as an example to deter other nations from according similar treatment to American citizens.

But it is not necessary for this Commission to go to the length of holding that exemplary damages can not be awarded in any case by any international arbitral tribunal. A sufficient reason why such damages can not be awarded by this Commission is that it is without the power to make such awards under the terms of its charter—the Treaty of Berlin. It will be borne in mind that this is a "Treaty between the United States and Germany Restoring Friendly Relations"—a Treaty of Peace. Its terms negative the concept of the imposition of a penalty by the United States against Germany, save that the undertaking by Germany to make reparation to the United States and its nationals as stipulated in the treaty may partake of the nature of a penalty.

Part VII of the Treaty of Versailles (Articles 227 to 230, inclusive) deals with "Penalties." It is significant that these provisions were not incorporated in the Treaty of Berlin.

In negotiating the treaty of peace, the United States and Germany were of course dealing directly with each other. Had there been any intention on the part of the United States to exact a penalty either as a punishment or as an example and a deterrent, such intention would have been clearly expressed in the treaty itself; and, had it taken the form of a money payment, would have been claimed by the Government of the United States on its own behalf and not on behalf of its nationals. As to such nationals, care was taken to provide for full and adequate "indemnities," "reparations," and "satisfaction" of their claims for losses, damages, or injuries suffered by them. While under that portion of the Treaty of Versailles which has by reference been incorporated in the Treaty of Berlin, Germany "accepts" responsibility for all loss and damage to which the United States and its nationals have been subjected as a consequence of the war, nevertheless the United States frankly recognizes the fact that the resources of Germany are not adequate to make complete reparation for all such loss and damage, but requires that Germany make "compensation" for specified damages suffered by American nationals. For the enormous cost to the Government of the United States in prosecuting the war, no claim is made against Germany. No claims against Germany are being asserted by the Government of the United States on account of pensions paid, and compensation in the nature of pensions.

22 Oppenheim, on *International Law*, 3rd. (1920) edition (hereinafter cited as "Oppenheim"), Vol. II, sec. 259a, page 353, where it is said (italics ours): "There is no doubt that, if a belligerent can be made to pay compensation for all damage done by him in violating the laws of war, this will be an indirect means of securing legitimate warfare."

²³ Articles 231 and 232 and Annex I to Section I of Part VIII of the Treaty of Versailles.

paid, to naval and military victims of the war and to their families and dependents.²⁴ In view of this frank recognition by the Government of the United States of Germany's inability to make to it full and complete reparation for all of the consequences of the war, how can it be contended that there should be read into the treaty an obligation on the part of Germany to pay penalties to the Government of the United States for the use and benefit of a small group of American nationals for whose full and complete compensation for losses sustained adequate provision has been made?

The United States is in effect making one demand against Germany on some 12,500 counts. That demand is for compensation and reparation for certain losses sustained by the United States and its nationals. While in determining the amount which Germany is to pay each claim must be considered separately, no one of them can be disposed of as an isolated claim or suit but must be considered in relation to all others presented in this one demand. In all of the claims the parties are the same. They must all be determined and disposed of under the same treaty and by the same tribunal. If it were possible to read into the treaty a provision authorizing this Commission to assess a penalty against Germany as a punishment or as an example or deterrent, what warrant is there for allocating such penalty or any part of it to any particular claim, and how should it be distributed? Why should one American national who has sustained a loss receive in addition to full compensation "smart money" rather than another? Should the full amount of the penalty be imposed in connection with a particular claim, or in connection with a particular incident out of which a number of claims arose, or in connection with all acts of a particular class? Why impose a penalty for the use and benefit of a small group of American nationals who are awarded full compensation, and at the same time waive reimbursement for the cost of the war which falls on all American taxpayers alike?

If it were competent for this Commission to impose such a penalty, what penalty stated in terms of dollars would suffice as a deterrent? And if this Commission should arrogate to itself the authority to impose in the form of damages a penalty which would effectively serve as a deterrent, where lie the boundaries of its powers? It is not hampered with any constitutional limitations save those found in the treaty; and if the power to impose a penalty exists under the treaty may not the Commission exercise that power in a way to affect the future political relations of the two Governments? ²⁵ The mere statement of the question is its answer. Putting the inquiry only serves to illustrate how repugnant to the fundamental principles of international law is the idea that this Commission should treat as justiciable the question as to what penalty should be assessed against Germany as a punishment for its alleged wrongdoing. It is our opinion that as between sovereign nations the question of the right and power to impose penalties, unlimited

²⁴ See Note 11 to this Commission's Administrative Decision No. II handed down this day.

²⁵ Vattel, Book II, Chapter XVIII, § 329.

in amount, is political rather than legal in its nature, and therefore not a subject within the jurisdiction of this Commission.

The treaty is our charter. We can not look beyond its express provisions or its clear implications in assessing damages in any particular claim. We hold that its clear and unambiguous language does not authorize the imposition of penalties. Hence the fundamental maxim "It is not allowable to interpret that which has no need of interpretation" applies.²⁶ But all of the rules governing the interpretation of treaties would lead to the same result were it competent for us to look to them. Some of these are: The treaty is based upon the resolution of the Congress of the United States, accepted and adopted by Germany. The language, being that of the United States and framed for its benefit, will be strictly construed against it.²⁷ Treaty provisions must be so construed as to best conform to accepted principles of international law rather than in derogation of them.²⁸ Penal clauses in treaties are odious and must be construed most strongly against those asserting them.²⁹

The treaty is one between two sovereign nations—a treaty of peace. There is no place in it for any vindictive or punitive provisions. Germany must make compensation and reparation for all losses falling within its terms sustained by American nationals. That compensation must be full, adequate and complete. To this extent Germany will be held accountable. But this Commission is without power to impose penalties for the use and benefit of private claimants when the Government of the United States has exacted none.

This decision in so far as applicable shall be determinative of all cases growing out of the sinking of the Steamship *Lusitania*. All awards in such cases shall be made as of this date and shall bear interest from this date at the rate of five per cent (5%) per annum.

Done at Washington November 1, 1923.

EDWIN B. PARKER, *Umpire*.

Concurring in the conclusions:

CHANDLER P. ANDERSON,
American Commissioner.

W. KIESSELBACH,
German Commissioner.

²⁶ Vattel, Book II, Chapter XVII, Sec. 263.

²⁷ Vattel, Book II, Chapter XVII, Sec. 264; *Digest of Justinian*, Book II, Title XIV, paragraph 39, Monro translation, 1904; *Treaties—Their Making and Enforcement*, by Samuel B. Crandall, 2nd (1916) edition (hereinafter cited as "Crandall"), sec. 171, page 401; Pothier on *Obligations* (Evans, 1806), Vol. I, page 58 (7th rule, Article VII, Chapter I, Part I); Woolsey on *International Law*, 6th (1891) edition, sec. 113; opinion of Ralston, Umpire, Italian-Venezuelan Mixed Claims Commission, Sambiaggio Case, Venezuelan Arbitrations 1903, pages 666 and 688-689.

²⁸ Opinion of Plumley, Umpire, in Arao Mines (Limited) Case, British-Venezuelan Mixed Claims Commission, pages 344 and 386-387; Venezuelan Arbitrations 1903, reference to Sambiaggio Case in note 27 above; *Vilas v. Manila*, 1911, 220 United States 345, 358-359; Crandall, sec. 170.

²⁹ Vattel, Book II, Chapter XVII, sections 301-303; Grotius, Book II, Chapter XVI, Sec.

BOOK REVIEWS AND NOTES*

The Open Door Doctrine in Relation to China. By Mingchien Joshua Bau. New York: The Macmillan Company, 1923. pp. xxviii, 245. Price \$2.50.

Dr. Bau says very truly in his preface that there is need of a comprehensive work relating to the doctrine of the Open Door as it has been applied in China. It is to be hoped that he will continue his work on this large and difficult subject to which this volume may serve as a useful introduction. With careful attention to footnotes the author has neatly summarized the documents in the case, beginning with John Hay's notes in 1899 and ending with the Nine Power Treaty of 1922 which both he and Mr. Tyler Dennett, who writes the introduction, regard as incorporating the doctrine in international law. The book also provides a most convenient guide to the diplomatic incidents which have occurred in connection with the efforts to maintain and extend as well as to break down the doctrine. The author does not, however, make any serious attempt to contribute to our knowledge of the circumstances or the personalities associated with the events. Particularly in the field of China's reactions to the actions of the Powers there is need of light which must be looked for through the use by Chinese scholars of their own sources.

After sketching the history of the doctrine, Dr. Bau considers in succession the meaning of equal opportunity of trade, and of the integrity of China, the relation of the doctrine to spheres of influence, to Chinese railways, to Japan's "special interests," which is set down without quotation marks, and to the new consortium, concluding with a chapter entitled "The Conditions of Successful Application." In these chapters the contribution is uneven, sometimes appearing little more than casuistry, at others sure-footed and sound. The reviewer particularly likes the chapter on spheres of influence, in which it is made clear that "any right of option or monopoly constitutes a closed door—a negation of the Open Door Doctrine," that "the New Consortium obliterates one of the leading features of the spheres of interest—the right of first option or the claim of priority" and that the Nine Power Treaty includes stipulations meant "to place an injunction on any further practice of the spheres of influence or interest, having defined this as being contrary to the Open Door principle of equal opportunity, and recognizing that it is not feasible to countenance the superior, preferential or exclusive rights of exploitation of any Power in any region of China and yet have equal opportunity of trade or participation therein.

On the other hand, one is surprised at the easy acceptance of the exception of vested interests, so liberally interpreted by the Consortium, on the ground

* The JOURNAL assumes no responsibility for the views expressed in signed or unsigned book reviews or notes.

of their establishment in treaties and agreements with China consequent upon the legitimate exercise of sovereignty *ex contractu* on the part of China." Again, is this conclusion the author's genuine thought? Regrettable as the fact may be that no definition of "special interests" was given in the agreement [the Lansing-Ishii], the interpretation of Mr. Lansing stamps the expression "special interests" with the indelible meaning of non-interference with the sovereignty and territorial integrity of China. The recognition of the special interests of Japan was not inconsistent but rather in harmony with the principle of the Open Door Doctrine (pp. 173). Or had the author's sincere desire to follow out the motto set for him by the patrons of his work, "to interpret and perpetuate the American principles of liberty, popular sovereignty and government by consent; to promote American solidarity; and to exalt the American ideal" at this point caused his pen to outrun his judgment? The cancellation of the Lansing-Ishii agreement was better evidence of the principles of the motto than its signature, as Dr. Baughn doubt will agree.

In general the book lacks color, what it has is American rather than Chinese. No doubt the author is seeking to avoid the charge of nationalistic bias, but in the effort he has caused himself to appear indiscriminating. Accepting the work as a restatement of well-known material, one cannot but wish for something more substantial.

HAROLD SCOTT QUIGLEY.

African Questions at the Paris Peace Conference. With papers on Egypt, Mesopotamia, and the Colonial Settlements. By George Louis Beer. Edited with introduction, annexes, and additional notes by Louis Herbert Gray. New York: MacMillan Company, 1923. pp. xlv + 628. \$6.00.

The author of this book served as chief of the colonial division of the American peace delegation of 1919 and as alternate member of the commission on mandates. He was already well known as an authority on English colonial history, as a writer, and as American correspondent of *The Round Table*. The editor of the present volume points out in the introduction the large part played by Mr. Beer in drawing up the colonial sections of the Paris treaties from which one may perceive how expert advice had a very real influence in the decisions of the plenipotentiaries (p. xxi). A study of Mr. Beer's report on colonial questions (pp. 431-458) will convince the reader that one expert at least was in complete harmony with the decisions in his field embodied in the treaty. At the close of the conference Mr. Beer was selected head of the mandates section of the League of Nations secretariat. He accepted the appointment and returned to America, where he died at the age of forty-eight on March 15, 1920. For many years he had suffered from ill health and the unremitting strain of the

conference had told heavily upon him. To this was now added mental pain, for he was to realize that the real foes of all that he had labored to do for America and the world were not the ex-enemy powers, still less the Allied Powers, but his own countrymen, misguided by specious leaders of reaction" (p. xliii).

The present papers, prepared for the "Hoyze Inquiry" in 1918, furnish a worthy monument to his memory. They show an unusual grasp of the colonial problem in its various aspects, and are a rich mine for detailed information about central Africa, Egypt and Mesopotamia. The economist and historian is evident in every page but, in the ability to condense wide erudition into brief and practical suggestions acceptable to the divergent political interests present at Paris, Mr. Beer showed himself a statesman of no mean order.

"The preëminent consideration in colonial administration," writes Mr. Beer, "must be the welfare of the native" (pp. 180, 431). The complete failure of Germany to accept this point of view in her colonial policy, in his opinion, justified her elimination as a colonial power. The evidence for this is presented in a history of the German-African colonies. "The attitude of the negroes was inevitably determined by thirty years of more or less constant oppression, and it is not surprising that they generally welcomed the elimination of German rule" (p. 38).

Looking at the problem from the standpoint of German interest, he shows how insignificant was the economic importance of the colonies to Germany. Less than half of one per cent of German pre-war trade was with her colonies and from them she obtained only three per cent of her colonial imports (pp. 11, 59). East African sisal was the only raw material which her colonies supplied in quantities sufficient for her wants (p. 142). From 1904 to 1908 the average colonial deficit was 160 million marks, while her average colonial trade was only 110 million marks (pp. 11, 25). The dominant aim of German colonial policy, however, was not economic gain, but the creation of a home under the flag for surplus German population. In this she failed signally. In spite of the hospitality to white settlement of much of Southwest and East Africa, only about eighteen thousand Germans, including the administrative officials, lived in the African colonies in 1913 (p. 10).

The secondary aim of colonial policy, in the author's opinion, is the interest of the outside world which demands preëminently equality of opportunity (p. 431). To assure protection of the natives and, so far as possible, the open door, Mr. Beer suggests the mandates system whereby responsibility for administration would be centered in one power acting under the supervision of the League of Nations. The superiority of this system to international government or condominium is ably set forth (pp. 421-423). The editor credits Mr. Beer with the first use of the term mandate in its present significance in his report of January 1, 1918, here printed (xix, 424). General Smuts' well known article on the subject did not appear until

December 16, 1918. (See reprint in *New York Nation*, Feb. 8, 1919, and article by Potter, *American Political Science Review*, Vol. 16, p. 565.) It is interesting to notice that Mr. Beer, like General Smuts, did not contemplate the universal application of the mandates system to German and Turkish ceded territory as actually adopted. He recommended that Toga, part of Cameroons, Southwest Africa and German New Guinea be transferred outright to the adjacent allied states (pp. 433, 443, 457).

The book contains a careful survey of the economic resources and trade of central Africa and the international agreements since 1885 for the protection of the natives and the resources and for the preservation of the open door. The difficulties encountered in the latter effort are well set forth. The author is under no delusions on this point. He recognizes that citizens of the state administering the territory, whether it be colony, protectorate or mandate, will always have an advantage because of familiarity with the laws, language, and social customs of the authorities. Trade will always follow the flag as it did in about equal proportions in the British and German free trade colonies and the French, American and Portuguese protective colonies. Any system of international supervision or control can do no more than eliminate the grosser forms of unfair competition (pp. 96-110, 213-220).

Apart from the central African problem, the book contains reports on Egypt and Mesopotamia. The account of Egyptian history since 1876 is interesting reading and the complexities of Turkish, Egyptian, British, and other authorities in its government before the war are untangled. "It was the custom in what Milner happily called 'the land of paradox' that the British officers in the Egyptian Army issued their orders in Turkish to Arabic-speaking soldiers" (p. 353). Mr. Beer approved of the British protectorate and recommended termination of the capitulations in Egypt (pp. 445-446).

The book contains several repetitions as is inevitable in a collection of isolated reports. Thus the discussion of the open door on pages 96 to 110 is virtually repeated on pages 213-220 and much of the material on agreements for the protection of natives in central Africa appears on both pages 168-178 and pages 222-238. The editor has added material to bring the account up to date, but distinguishes it by brackets. He also includes a number of maps and a useful collection of documents and treaties. The student of African and in fact of all colonial problems will find the book an indispensable aid.

QUINCY WRIGHT.

Prize Cases decided in the United States Supreme Court, 1789-1918. Publication of the Division of International Law of the Carnegie Endowment for International Peace. Oxford: Clarendon Press, 1923. 3 vols. pp. xlv, 2182. Index. \$15.00.

As stated in the preface, dated Paris, 1919, by Dr. James Brown Scott, Director of the Division of International Law of the Carnegie Endowment for International Peace, the Supreme Court of the United States has had occasion to consider for upwards of a century questions of prize law. The decisions of these questions have had great influence in shaping international law and bringing it to its present stage of development. While not a few of these decisions in matters of prize have met with violent opposition, they have stood the test of subsequent experience and in the end they have had the good fortune to secure the approval of not only the naval profession but of eminent jurists of the world. The collection and publication of these prize decisions, which are found scattered through some 250 volumes of the Reports of the Supreme Court, are made, the preface continues, for two reasons. The first reason is the then likelihood of the constitution at no distant date of an international court of justice which may be called upon to decide questions of prize law and which would be greatly aided in its labors by the opinions of the Supreme Court of the United States in matters of prize since they are "safe and sure models for international courts to follow in the study and consideration of questions brought before it for judicial determination." The second reason is that the judgments of the Supreme Court in matters of prize might be brought together within a narrow compass for the use of statesmen, diplomats or jurists who may have to consider and pass upon the German prize decisions rendered during the war of 1914-1918. It is recalled that by the treaty of Versailles the Allied and Associated Powers reserved the right to examine all decisions and orders of German prize courts and that Germany agrees to give effect to the recommendations made after such examination. The texts of the decisions used in this compilation are those of the official edition of the Supreme Court Reports published by the Banks Law Publishing Company. From these official texts the cases have been reprinted in full with the head notes and notes of the official reporter wherever they occurred. In addition page references to the official texts are retained on the margin.

In a very carefully prepared introduction to these prize cases, the history of prize procedure during the revolutionary period and up to the establishment of the Supreme Court of the United States under the Constitution is traced. The significant fact is brought out that the Federal Court of Appeals in Cases of Capture, which was established by Act of January 15, 1780, a year in advance of definitive adoption of the Articles of Confedera-

tion, was in its day the highest court in the country and the first appellate tribunal with jurisdiction over all of the United States. Such a federal court must have had an educative influence in bringing the people of the United States to consent to the establishment of the present Supreme Court of the United States, just as that court has had an influence for the establishment of a supreme court for the society of nations.

The three volumes contain 192 decisions of the United States Supreme Court and also an Appendix of eight decisions of the earlier Federal Court of Appeals. The collection contains only one decision arising out of the World War, namely, that of the *S. S. Appam*, which was a British ship brought into the port of Norfolk as a German prize and sequestered there by the United States during the course of the prize proceedings in the United States federal courts. The Supreme Court of the United States decreed the restitution of the vessel to the private owners for violation of the neutrality of the United States. Although no other prize decisions were rendered by the Supreme Court as a result of the World War, it is interesting to note the frequency with which the earlier prize decisions of that court were cited and relied upon in the numerous decisions of the prize courts of the other belligerents during the World War, particularly Great Britain.

It is, of course, impossible to review or even give an impression of the questions of prize law which are covered in these decisions, for they include practically the whole range of that branch of jurisprudence. The scope of this collection of prize decisions is readily perceived by examining the excellent index of the three volumes consolidated in some forty pages and prepared by Henry G. Crocker, Esquire, of the Division of International Law of the Carnegie Endowment for International Peace. This elaborate publication of the Division of International Law is in line with the laudable policy of the Endowment to make the sources of international law available in convenient form for the use everywhere of men of affairs and students of the subject—a policy which cannot be too warmly commended.

It is interesting to recall in this connection that several of the cases whose decisions are here reprinted have been the subject of diplomatic correspondence and in some instances of subsequent international arbitration. The cases of *Peterhof* and the *Springbok*, which arose during the Civil War are notable examples. The review by international tribunals of prize cases was provided for in the treaties of 1794 and 1871 and in the 1907 project for an international prize court. It may also be observed that in the *Peterhof* and *Springbok* cases the United States applied the doctrine of continuous voyages to the principles of contraband and blockade in order to intercept trade with neighboring neutral territory and that during the World War Great Britain relied largely upon the same doctrine in the application of her blockade and contraband measures to Germany. The American Relief Administration made by the Red Cross the American Relief Administration. To assume that the organizations are recog-

La Question Juive devant le droit international public. Thèse pour le doctorat. By Elie Cohen. Paris: Editions de la Vie universitaire, 1922. pp. 308.

This thesis contributes very little except certain facts either to international law or to the Jewish question. The author has adopted a philosophical method, but he is distinctly a particularist in using it. One gets the impression throughout that Dr. Cohen really wants all the advantages and none of the disadvantages of this world for his people. In one place he suggests that "the states of eastern Europe have only to start a sort of rivalry in the satisfactions to be given to the desires of the Jews" to gain their loyalty and support (p. 191).

Dr. Cohen's historical review is sufficient for his purpose. He has studied the operation of the minorities treaties, finding them lacking in sanction owing to the failure to recognize a minority as a juridic person capable of initiating proceedings in its own right. This "cannot be granted without modalities conformable to circumstances, but it must be granted." To give the Jews the quality of a nation—Palestine is not here in the author's mind—is an unprecedented act: "It will finally detach the idea of a nation from that of territory. But in doing this it will create nothing that does not exist" (p. 267).

The author's solution of this revolution is "to give place in the League of Nations to a representation of Jews properly appointed" by "a universal Jewish congress democratically elected." The Jewish representatives would have the right of bringing up in the League "all the questions which the situation of the Jews may yet precipitate until the far-distant day of its complete solution, and especially the problem of anti-Jewish propaganda."

Leaving aside the probability that anti-Jewish activity is a passing phenomenon, this proposal merits some consideration in the light of international possibilities. In the terms of international law it amounts to a proposal that a portion of many states identifiable by the same racial, religious and cultural characteristics shall, in view of them, be given a virtually independent status as an international entity, but without territorial or other sovereign attributes, and apparently without responsibility. This is altogether different from the growing recognition of occupational, professional and scientific groupings which cooperate with rather than oppose the political state.

It would have been interesting if Dr. Cohen had devoted some space to examining the practical difficulties of realizing his proposal. All he does is to cite the treaty concluded between Lithuania and the Executive Committee of the Universal Jewish Relief Council, signed at Kovno on November 14, 1921. This document, called a treaty, is one of the numerous agreements made by the Red Cross, the American Relief Administration and similar organizations. To assume that the organizations are recog-

nized even *de facto* as persons in international law by reason of the negotiation of such agreements is very wide of the mark. They are mere administrative contracts with foreign corporations.

It is safe to predict that the organizations that defend Jewish interests most effectively will not adopt this program.

DENYS P. MYERS.

India in World Politics. By Taraknath Das. New York: B. W. Huebsch, 1923. pp. xvii, 135. \$1.25.

India in Ferment. By Claude H. Van Tyne. New York: D. Appleton and Co., 1923. pp. xii, 252. \$2.00.

Both these volumes belong to the literature of propaganda—one of them being pro- and the other anti-British. But their relative value is very different.

India in World Politics need not long detain us. Though not wholly devoid of interest or utility, this little book consists largely of citations intended to show the "extent to which the foreign policy of Great Britain has been determined by the possession of India. . . . The possession of India determined the policy of Great Britain, and her relations with Persia, Japan and, to a greater extent than appears on the surface, with China. Fear of the Suez route to India forced Great Britain's hand against Egypt, and jealousy of the Bagdad route arrayed her against Germany." (See introduction by R. M. Lovett, pp. xii-xiii.)

On the whole the citations seem well chosen and on the surface appear to support the main thesis which is that British relations with other nations have been unfavorably affected by the possession of India. But it is obvious that the method employed to demonstrate this fact (if it be a fact) is highly objectionable to the student seeking for an impartial presentation of the truth. The book may serve the purpose of advocacy, but not of real investigation. Such a biased or one-sided treatment of the subject is sure to result in false or exaggerated impressions.

India in Ferment is also the work of an advocate, though of a much higher order of merit and the product of a far more justifiable and fruitful method.

Professor Van Tyne frankly admits his pro-British prejudices and other limitations in the preface. He confesses that he "took to India no special knowledge of it, but merely a mind trained to a study of the social sciences and to observe political activities, past and present"; that he "did look at the Indian life with Western eyes," and brought with him all his "American prejudices in favor of cleanliness, sanitation, hygiene, and universal education"; and that he has little sympathy with "superstition, religious fanaticism, and the mystic Indian philosophy."

The student is thus forewarned and forearmed; and if he permits himself to be unduly influenced by what follows, he has only himself to blame. There are perhaps certain advantages in this method of investigation by a

keen and well-trained, if somewhat unsympathetic, observer, provided the reader is not a person of "one book."

The results are very fruitful when applied to such subjects as "The Government of India Act," "The Indian Legislative Assembly," and "The Reaction of Indian Princes, Hindus, Moslems, and British Officials to the Reforms," but less satisfactory in a criticism of Mahatma Gandhi and "Non-Violent-Non-Cooperation."

The sermon on the mount, the sayings of Lao-tze, or the Buddhist Middle Way of the Eight-fold Path—to say nothing of certain teachings of Hinduism—would throw more light upon the non-cooperative movement in India and the personality of Gandhi pervading it than any mere Western observer could possibly furnish.

On the other hand, our pro-British American observer seems to be very fair in his report on the Indian arraignment of the British Government and the British service to India. He does well to record his "firm conviction" that the "Indian problems cannot be solved merely by giving India a liberal constitution. If the English are to stay in India, a friendly personal relation with Indians must be cultivated," etc. (p. 160). He rightly absolves the British Government from most of the crimes and blunders with which it is charged by Hindu agitators, and he does not fail to condemn the colossal crime and blunder of Amritsar. But it is difficult to believe that the Brahmins are solely or even mainly to blame for the failure of Great Britain to carry primary education to the masses in India, at least to a greater extent than has been hitherto attempted.

On the whole the criticisms seem well chosen and well expressed. AMOS S. HERSHEY suggests a criticism which is that British relations with other nations have been unfavorably affected by the possession of India. But it is of course a fact that the method employed to demonstrate this fact (if it be a fact) is that the book is devoted to the history of the Bagdad Railway. By Edward M. Earle. New York: The Macmillan Co., 1923. pp. xiii, 364, 2 maps, index.

An authentic and detailed account of the history of the Bagdad railway enterprise and its effect upon the politics of the Near East is given for the first time in this little book. Its author, who is a Professor of History in Columbia University, is well qualified—both by his historical knowledge and by recent researches in documentary sources and the latest publications—to handle this subject with insight and ability. Moreover, he has had the good fortune to have access to such new documentary material and to meet a number of the leading financiers—German, Turkish and British—who played important rôles in the events he describes. And it is refreshing to meet with a volume of this character, after the deluge of books on the Balkans, Turkey and the Near East, which have appeared in recent years from the pens of travelers, press agents and even historians, who have rushed into print on one phase or another of the recent developments in this fascinating section of the world, without an adequate historical background or an intimate knowledge of the peoples and problems of the Near East.

The first chapter of this study is a brief account of the old trade routes across Asia Minor and Mesopotamia, and of the advantageous geographical location of the Ottoman Empire. The next four chapters are devoted to a summary of the natural wealth of Turkey and to the story of the German economic invasion of Turkey-in-Asia, the building of the Anatolian and Bagdad railways, and the development of German trade, financial interests and commercial concessions in the Ottoman Empire. Chapter VI explains how the Bagdad railway became "an Imperial Enterprise"; and Chapters VII to X describe the long diplomatic struggle between the powers for trade rights and concessions, and their efforts to secure a commercial partition of the Turkish Empire. And Chapter XI, under the title "Turkey Crushed to Earth Rises Again," gives the details of the Turco-German failure in the Great War, and of the rise of the new democratic Turkish state; while Chapter XII concludes the story with a summary of the contest between the powers for the control of the Bagdad railway, after the close of the Great War, and down to the granting of the Chester concession in 1921.

The author writes well and interestingly. He tells his story clearly in a straightforward fashion, and supplements it with copious notes, quotations and references to authorities at the end of each chapter. It is always difficult to treat satisfactorily one phase of a great movement removed from its natural setting. In this case the work suffers from the lack of a proper background to explain the full significance of the progress of events in the Near East from 1888 to 1923, and from an overemphasis of one of the numerous issues involved in the Near Eastern question. This is particularly evident in Chapter XI, where the writer describes the developments in the Near East after 1914, but gives only a portion of the complicated diplomatic maneuvers and agreements of that period affecting Turkey in Asia; and fails to explain the significance of the failure of the Powers to agree upon a Turkish policy for four years. It is a pity that the author did not delay the publication of his book a few months, so that he could have availed himself of the published material concerning the Lausanne treaty and the negotiations that preceded it, as well as that pertaining to the recent economic agreements and concessions to foreign companies other than the Chester concessions. If he had done so, his last chapter would have possessed great value, instead of being merely a summary of the commercial competition centered about the Bagdad railway since 1921. Occasionally, the writer fails to emphasize important points, while giving in detail events of minor significance; as when he describes in detail the British invasion of Mesopotamia, but fails to say anything about the siege of Kut-el-Amara, nor when giving the reasons which induced the Turks to enter the war on the side of Germany, he neglects to state how Turkey was drawn into the conflict in the face of a cabinet majority decidedly favoring a policy of neutrality. Moreover, the German point of view is overstressed here and there, while too little space is devoted to the policies and work of

Russia, Great Britain and France and their nationals in the Near East. And Chapter VI would have been materially improved, if more attention had been given to the work of Pan-German and colonial organizations and writers in Germany to promote the German advance in Turkey and the Near East.

On the other hand, the author has brought out admirably two important points so often omitted by writers on the Near East, *i.e.*, the commercial partition of Turkey-in-Asia in 1913-1914, and the shortsighted policy of the Powers in excluding the Turks from all agreements and treaties affecting the Near East from 1918 to the Lausanne conference. And he has demonstrated effectively the folly of attempting to settle great international problems in the interests of imperialism and of selfish nationalism. It is unfortunate that the publishers printed such an inferior map as a frontispiece; but all students of Near Eastern affairs and intelligent readers will welcome this volume, for it is a real and valuable contribution to the literature of a field which so far has been very inadequately covered by English historical writers.

NORMAN DWIGHT HARRIS.

The Recent Aims and Political Development of Japan. By Rikitaro Fujisawa. New Haven: The Yale University Press, 1923. pp. xi, 222. \$2.50.

Professor Fujisawa, though a distinguished mathematician, possesses an extensive knowledge of the modern political history and institutions of Western countries and a very sincere ambition to understand the forces which underlie political forms. Very properly he seeks to assist Americans toward a proportioned view of Japanese and American institutions and policies. This little volume, presented in the attractive style uniform in the series of the Institute of Politics, contains the author's lectures delivered before the Institute in the summer of 1923. The first four chapters are devoted to domestic politics and political figures, the fifth to a comparison of democracy and militarism in Japan and in Western countries, particularly in the United States, the last to Japan's aims.

The book is an apologetic for the conservative forces and for the men who guide them. Militarism, the Genro, the clans, the bureaucracy—the latter the pure bureaucracy and not the bastard bureaucracy of the parties—while not unqualifiedly praised, are all viewed in a favorable light. Yamagata is the author's hero, in peace no less than in war, to whom Itō deserves an unquestioned second place. Okuma receives rather grudging endorsement, since he lacked the primary quality of Japanese statesmanship, taciturnity, and was inclined too strongly to use Waseda as a training-ground for political journalism. Hara, the "Great Commoner," appears and reappears, in season and out of season, as a statesman who, "with his silvery white locks, rises ever greater in our vision, like the snow-crowned Fuji . . . su-

premely distinct from his party surroundings . . ." (p. 129), but his principal claims to that characterization appear to be that he was an autocrat within his party and possessed a remarkable talent for accommodating himself with the Genro and the House of Peers. Mr. Fujisawa is generous in his remarks upon Yamagata, Okuma and Hara, but his comment is unfortunately colorless and leaves the reader with no clearer picture than more general works might be expected to convey.

The reader is warned at one point, where it is deemed necessary in order to lay a foundation for endorsing the persistent control of the Genro (p. 106), against accepting Japan's "modern political forms" at their face value. Yet comparisons are frequently introduced between those forms and their counterparts, as their author thinks, in Europe and in America: "The Emperor of Japan reigns but does not rule, just as the King of England reigns but does not rule" (p. 55); "The time-honored saying of the British Constitution, that the House of Commons holds the purse-strings, is equally true in the case of Japan" (p. 101); "Regardless of whether the form of government is a constitutional monarchy or a republic, it seems to me, all countries which survived the World War are democratic states" (p. 134); "Democracy finds its safe, genial, blessed abode in the Island Empire of the East" (p. 142). Hara is compared with Gladstone, with the statement, undoubtedly misprinted, that he, like Gladstone, had occupied the premiership at four different periods (p. 8); the Terauchi ministry of 1916 is compared with the contemporary coalition ministry of Lloyd George.

One might quote several statements displaying such divergence from the facts as they are set forth in standard works, both Japanese and foreign, on the political system of the country, as to cause wonder at their obvious inaccuracy. On page 69 it is maintained that "The Government has no control over the Japanese press"; on page 120 that "The institution [the Genro] will never prove itself a hindrance to the progress of party government, simply because it cannot"; Yamagata is credited with "having been the pioneer advocate of popular government in Japan" (p. 32); one questions whether the Genro would deserve or appreciate the title "simple-minded"; on the other hand, the author's suggestions on the subject of the responsibility of ministers are fresh and valuable (pp. 55-58), as are his ideas upon the possible future of the Genro (pp. 115-120).

Mr. Fujisawa's discussion becomes most objective in treating the development of political parties. Slight attention is given to the "true-born" politicians and no allusion is made to the "dangerous thoughts" that are beginning to disturb the calm waters of perfect submission to the Emperor, but the older political parties are dealt with from an unbiased point of view. Hara is credited with having placed the parties on an assured foundation upon which the erection of a genuine party government will await the discarding of feudal notions such as are now permitting parties to develop into "selfish oligarchies worked by professional politicians." The move-

ment for manhood suffrage is dismissed summarily as a rallying-cry of opposition parties seeking the "selubrities" of office.

Professor Fujisawa was laboring under a serious illness while preparing and delivering the lectures which compose this series, a sufficient excuse for the ill-organized form in which the material is presented. Possibly, however, he would have done wisely in inviting revision by some Japanese scholar whose attention has been more consistently devoted to the study of political problems than that of a distinguished scientist in another field possibly could have been. There is no field more often misinterpreted, as Mr. Fujisawa recognizes, than that of Far-Eastern politics, and it is doubtful whether this author's sincere attempt to assist the international "understanding" which he rightly considers primarily important is destined to be fruitful.

HAROLD SCOTT QUIGLEY.

The Equality of States: A study in the History of Law. By Julius Goebel, Jr. New York: Columbia University Press, 1923. pp. 89.

The doctrine of equality of states has been attacked on the ground that it is not applied in practice (T. J. Lawrence, *Essays*, 1885, p. 209; Hicks, *Proc. A. Soc. Int. Law*, III: 241), and that it is inexpedient because it prevents international organization and assures continuance of self-help and war in international relations (Dunning, *Am. Pol. Sci. Rev.*, XVII, 15; Potter, *International Organization*, p. 254). Professor Dickinson's comprehensive treatise (*Equality of States in International Law*, 1920) emphasized in the main these two aspects of the question, but discusses also the historic evolution of the doctrine of equality, with the conclusion that it was not part of the system of Grotius but was imported into international law by the "naturalists," Hobbes and Pufendorf, who assumed an analogy between states and men in the state of nature. The equality of men in the state of nature came from the Stoics, who passed it on to the Roman lawyers, the Church fathers, and the schoolmen. The analogy was the work of seventeenth-century jurists, but being made, equality of states inevitably followed from the accepted natural law philosophy.

Dr. Goebel takes issue with this part of Dickinson's argument. He denies the existence of equality in the jural sense in the philosophy of either the Roman jurists, the Church fathers, or the schoolmen. In his opinion, the doctrine of equality, instead of flowing from a doctrine of antiquity transmitted through the Middle Ages, grew out of developing practice opposed to medieval theory. It began in the recognition of equal sovereignty of rulers in their treaties and arbitrations (pp. 47, 58); it received new weight when sovereignty began to be ascribed to states regarded as *persona ficta* and enjoying some of the characteristics of Roman law corporations (p. 66); it became accepted with the general disavowal of imperial and papal claims of universal dominion after the Reformation (p. 71); and was finally stated

as a doctrine of international law, not by the theorist Pufendorf, but by Leibnitz who, according to the author, was governed by an "utter sense of political reality" (p. 88). Thus it grew, not from ancient theory and bad analogy, but was a necessary deduction from the sovereignty of states which had existed *de facto* for two centuries when Leibnitz wrote (p. 58).

Dr. Goebel has made an important contribution to political theory. The accuracy of distinction and wealth of citation convinces the reader of the soundness of his exposition of the political philosophy of the Stoics, of Roman law, of patrists, of schoolmen, of Luther, Calvin, Grotius, Pufendorf, and Leibnitz. His discussion of the nature of international transactions, particularly treaty-making and arbitration, in the Middle Ages opens up a fertile and little cultivated field for the historian of international law. To the reviewer, however, the opposition between his views and those of Professor Dickinson is less radical than at first appears.

Dr. Goebel admits the influence of the Stoic conception of natural law in the system of the seventeenth-century jurists (p. 78) and the importance of the ascription of personality to the state by Hobbes and Pufendorf (p. 83). Professor Dickinson, on the other hand, admits that the doctrine of equality was "reënfined by theories of sovereignty" (*op. cit.*, p. 334). Their main difference is on the question of relative importance and on the pedigree of the seventeenth-century natural equality philosophy. Dr. Goebel does not deny the occurrence of phrases suggestive of the Stoics' natural equality in the writings of Roman jurists, patrists, and schoolmen. He may be right in holding that these phrases if given their original meaning would have been out of harmony with the general philosophy of Roman law and medievalism, but that does not detract from their importance as mediums whereby the Stoic conception was transmitted from ancient Rome to the seventeenth century. The history of ideas is in large part the history of ephemeral systems each attributing new meaning to phrases which persist. An ancient phrase when revitalized by a long dead meaning may be revolutionary. The development of *de facto* sovereignty, the Stoic doctrine of natural equality, and the analogy between states and men in a state of nature seem to have all been important in creating the international law doctrine of state equality. Dr. Goebel has unquestionably made a good case for the priority of the former.

As a question of present law, however, it would seem that if practice was indeed the basis of the doctrine of equality in the seventeenth century, it would be in accord with the spirit of international law to change the doctrine today. Dickinson has certainly proved that equality is not in accord with present practice. In fact Dr. Goebel admits that "equal legal capacity . . . is in no sense an absolute conception, but is limited and conditioned by the nature of the legal order to which the relationship is sustained," and that it may be "conditioned by any number of extraneous facts" (p. 79). With these qualifications Goebel's "equal legal capacity"

would seem to approach very close to the "inequality of capacity" which Dickinson finds in present international relations. Both agree that equality before the law is necessary for any legal system. Dickinson looks upon recognition of political inequality as expedient and necessary for the perfection of international organization. Some of Goebel's remarks sound hostile to this view, but he does not argue the point. "A direct practical result," he says, "is not the chief aim of the student of legal history, for he must ever remain a stranger to partnerships such as the natural scientists have nurtured between scholarship and utilitarianism."

QUINCY WRIGHT.

Selected Documents and Material for the study of International Law and Relations. By John Eugene Harley. Los Angeles: Times Mirror Press, 1923. pp. xviii, 412. \$3.00.

In 1923, Professor Harley issued a collection of documents and materials for the study of international law and relations. As he is deeply interested in international organization and international peace, it was but natural that he should give special emphasis to these subjects, and he prefixes introductory chapters (1) on the development of international cooperation during the nineteenth and twentieth centuries; (2) pacific settlement of international disputes; (3) the creation of the Covenant for a League of Nations; (4) and (5) the Washington Conference on the limitation of armament and Pacific and Far-Eastern questions. These five chapters cover 150 pages, Chapters 4 and 5 being made up of the Report of the American delegation to the Washington Conference (pages 42-150). The first three chapters are introductory in the stricter sense of the word, in that they furnish a background and the facts necessary to an understanding of the documents.

It is difficult to give an idea of the scope of the volume without quoting its table of contents, and when that is done the book speaks for itself. At least the table for Part 2, containing selected documents and material for the study of international law and relations, should be placed before the reader. It contains President Wilson's fourteen points; the program of the League to Enforce Peace; the American plan for a League of Nations; the proposals of General Smuts; the plan of Lord Robert Cecil; the composite Covenant made by the legal advisers of the Commission on the League, the preliminary constitution for the League of Nations agreed to February 14, 1919, and the final text of the Covenant. It also contains the proposed amendments to the Covenant, the apportionment of expenses of the Universal Postal Union, the proposed allocation of expenses of the League; and the section of the peace treaty upon the International Labor Organization. It also contains the Root-Phillimore plan for the Permanent Court of International Justice, and the Statute for the Court.

As a typical mandate, the book contains the Japanese mandate for the former German possessions in the Pacific Ocean, accompanied by the report of the Permanent Mandates Commission. Finally, the book gives the text of the Hague Convention of 1907 for the pacific settlement of international disputes, a table of cases decided by the Permanent Court of Arbitration, and the treaties and resolutions adopted by the Washington Conference on the Limitation of Armament. These are followed by President Harding's address submitting the foregoing treaties to the Senate, the treaty between Japan and China for the settlement of the Shantung question, the original text of the Monroe Doctrine; the Rush-Bagot agreement of 1817 for the limitation of naval armament on the Great Lakes, and the joint resolution of 1910 relating to the limitation of naval armament; a classification of states and dependencies, a table of the territory of the United States, and the treaty between the United States and Japan regarding the Island of Yap.

It follows from this table of contents that the book is a highly useful one, inasmuch as Professor Harley has brought together material useful for the classroom but difficult to procure. With this volume at hand, a teacher and instructor of political science who wishes to show particularly the recent international development, can do so with the assurance that his students will be able to question his statements by the documents, and from the study of the documents under the guidance of a competent instructor a very fair knowledge of the present state of international development can be had.

In the matter of documents, the question of inclusion and exclusion is difficult. Often it is personal. Some documents would be chosen by one, and omitted by another. The question, therefore, is not whether Professor Harley chose that of the reviewer, but rather whether the work is serviceable and to this question an affirmative answer can be given.

Without intruding his personal opinion, the reviewer feels that it would have been advisable to include the arbitration treaty of 1903 between France and Great Britain, negotiated in pursuance of Article 19 of the Pacific Settlement Convention of 1899, in which the Powers, unable to agree to the acceptance of a general treaty of arbitration due to the opposition of Germany, reserved the right to do so among themselves. It may seem to the uninitiated a strange thing to reserve a right which existed without reservation; nevertheless, diplomacy has its own ways and Ministers of Foreign Affairs are not as logical as academic people. The result of this apparently useless reserve has been the network of arbitration treaties in which the world is entangled to its very great benefit. Indeed, in one year Mr. Root when Secretary of State, negotiated no less than 26. It may be said that these treaties taken together furnish a very substantial jurisdiction for a Permanent Court of International Justice, inasmuch as under these treaties the nations agree to submit their disputes of a judicial nature, especially the interpre-

tation and application of treaties and conventions, under the reserve of vital interests, independence and honor of the contracting states.

It is a special pleasure to note that Professor Harley was formerly Carnegie Fellow in International Law, Harvard University, and it is especially pleasing to the reviewer, upon whose recommendations these fellowships were established, that Professor Harley should be so appreciative of his fellowship that he mentions the fact upon the title page of his excellent book.

JAMES BROWN SCOTT.

Die Privaten Rechte und Interessen im Friedensvertrag. By Dr. Hermann Jsay. 3d ed. Berlin: Verlag Franz Vahlen, 1923. pp. xviii, 488.

This edition differs so much both in scope and content from the previous editions that it may be called a new work. The former editions were elementary and introductory; this is well-nigh cyclopaedic. In a style admirable for its clarity and conciseness, the author touches upon nearly all the important questions that arose during the war affecting so-called private rights of individuals against belligerent nations and that are now being concretely adjudicated under the provisions of the Versailles treaty relating to reparations and damages.

The decisions of the mixed commissions, particularly the Franco-German Commission, are constantly drawn upon by the author in the discussion of Part X of the Versailles treaty. The book contains a valuable presentation of the origin, jurisdiction and functions of the mixed commissions. Dr. Jsay feels that the high hopes of the friends of international arbitration from these commissions have not been realized (p. 427), largely perhaps because of a fundamental error in the effect given to Article 231 of the Versailles treaty (pp. 150-153). Certainly if Article 231 of that treaty, in which Germany acknowledges her general responsibility for the war, is to be taken out of its connection in Part VIII and carried over into Part X which relates to the claims of individuals for indemnity, it must be clear that some of the decisions of the mixed commissions may be colored by the principle, *on est suspect, tout est examiné*, rather than by juridical rules for the interpretation and application of Part X of the treaty. The commissions might be in danger of administering a sort of Jeddart justice "where all day long they hang and draw, and sit in judgment after." Such, in effect, at least, is Dr. Jsay's criticism of the decisions of the Franco-German Mixed Commission in the Rousseau case (June 28, 1921) and the Franz and Hourcade cases (February 11, 1922).

Apart from a slight display of feeling on that issue, the author has written objectively and instructively. The inherent difficulties of interpretation of the Versailles treaty, both as regards its express provisions and as regards its hiatuses, have generally been frankly admitted, and it is strange that so few books, or even monographs of scientific value, have been published on

that subject. Dr. Jsay has performed his painful task well. His book is useful not only for the vast amount of detailed information it contains, but more so because it professes to base its conclusions upon the law of nations. "The World War," says Dr. Jsay, "which in the minds of many proved the impotency of the law of nations, in reality proved its indestructible vitality." If the document signed at Versailles is a *treaty*, not a *ukase*, it must be interpreted, applied and executed, on all parts, in accordance with the law of nations. That is Dr. Jsay's thesis, and we don't suppose anyone will take exception to it.

GEORGE C. BUTTE.

Dumping: A Problem in International Trade. By Jacob Viner. Chicago: The University of Chicago Press, 1923. pp. xiii, 343. \$2.25.

Dr. Viner's book is a substantial contribution to the literature on the theory and practice of dumping. If the book has a fault, it lies in its refinements of definition and its detailed analysis of points of relatively small importance. But the book is not a work of popularization, and even what some readers may regard as its overelaboration may find justification in the limited discussions in English on the subject of dumping, and in the fact that it may clarify confusion which exists in the minds of business men as to what constitutes dumping.

Dumping, according to the author's definition, is price discrimination between national markets—a definition so broad that it includes, on the one hand, a manufacturer's sale of products in foreign countries in the ordinary course of business at a price below his home price in order to meet legitimate competition and, on the other hand, the cutting of prices in a foreign market by a manufacturer intent on driving a competitor out of business. Such a definition, if it is to be useful, obviously requires further amplification, and this is found in a classification of dumping practices according to their continuity and the motive of the dumper (p. 23). Perhaps it may be emphasized that the author does not condemn dumping as wrong *per se*. It is a trade practice which under some conditions may be legitimately followed without injury to the consumer either at home or abroad.

Current discussions usually refer to dumping as a practice whereby "foreigners" in some way or other injure American industry. To many Dr. Viner's discussion of the prevalence of dumping, since 1890, by American and foreign producers alike will be a surprise. He shows that export dumping "on a continued and systematic scale has been a common practice of American manufacturers since at least the late eighties of the last century" (p. 80). It should not be argued from this that American manufacturers are necessarily engaged in unfair competition in foreign markets. Price differences between national markets may, in one case, accord with good business practice and with public policy, and in another case may be

unfair and predatory. Dr. Viner shows—I think conclusively—that dumping may be profitable to a business concern. Under some conditions the dumper may even practice it continuously and thereby achieve a lower unit cost in his factory. Dumping under such conditions, however, can only be carried on in a secondary market.

Some very useful chapters review the various existing anti-dumping statutes, comparing and contrasting the different policies embodied in them.

Dr. Viner clearly accepts free trade as the most desirable commercial policy in international relations. He does not, however, consider anti-dumping legislation inconsistent with the doctrine of free trade. "If the free trade doctrine," he says, "be regarded as the positive doctrine that commerce and industry should be kept in their natural channels and not merely the negative doctrine that nothing be done by legislatures to force them out of their natural channels, it would not merely be invalid to cite the doctrine as opposed to restrictions on dumping, but it would be valid to argue that it calls for such restrictions" (p. 147). In this connection he also concludes that protective tariffs alone are not a safeguard against dumping by foreign exporters.

Dr. Viner devotes considerable space to arguing that bounty-countervailing duties are incompatible with the most-favored-nation guarantee in commercial treaties, but affirms that dumping duties are perhaps not incompatible with such pledges. Frankly, I cannot follow his refinements on this subject. The test is whether or not the foreign government or citizen can remove the bounty or other aid to exportation which leads to the imposition of the countervailing duty or the dumping duty. Dumping deliberately stimulated by government bounties would seem to me to be more in violation of the spirit of equality of treatment embodied in the most-favored-nation clause than cut-prices which may result from a legitimate business practice, *i.e.*, from dumping. The granting of bounties has been emphasized as a violation of the most-favored-nation clause because the practice *deliberately* destroys "the equality which it is the object of the most-favored-nation clause to establish" (Moore's *Digest*, Vol. V, p. 282).

Dr. Viner expresses the hope that his book will "prepare the way for a study of the broader question of standards of competition in international commerce" (p. ix). The chief value, in fact, of his book is that it introduces the larger problem of devising adequate means for cooperation among states in the regulation of unfair methods of competition in international trade. Dumping under certain conditions is an unfair method of competition. Unfair competition, however, expresses itself in many other forms and it is a mistake to isolate dumping from the larger problem. Nor is dumping merely to be regulated by national anti-dumping statutes. It is a practice which is carried on not only in markets protected by such statutes but by exporters of one country against the export trade of another in a third country which may be willing to permit cutthroat com-

petition. If anti-dumping legislation is justified to maintain fairness in trade in a nation's home market, it is equally justified to maintain fairness in commercial intercourse in those areas of the world to which the regulating influence of sound commercial law does not now extend. The world is, therefore, confronted with the need of a code of international commercial law and the development of the proper agencies for its administration.

W. S. CULBERTSON.

NOTES

By resolutions adopted at the Conference of Washington on December 10, 1921, the representatives of the United States of America, Belgium, the British Empire, France, Italy, Japan, The Netherlands and Portugal undertook to "establish a commission . . . to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the governments of the several Powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality."

Under the terms of the resolutions, the International Commission was to be constituted within three months from the adjournment of the conference and to submit its report and recommendations within one year after its first meeting. The Conference of Washington adjourned on February 6, 1922, and the first three months' period therefore expired on May 6, 1922; but the Chinese Government requested that the formation of the commission be deferred for a year in order to give that government time to prepare translations and assemble other information indispensable to the study of the question. The interested Powers acceded to this request. Other considerations have further postponed the execution of the resolutions; but in the meantime, in June, 1922, the Chinese Government charged a Commission on Extraterritoriality to proceed with the preparation of the necessary material for the eventual use of the International Commission.

Among other things the Commission on Extraterritoriality has undertaken the publication in French and English of the principal modern Chinese legislative acts, including constitutional laws, the civil and commercial and penal Codes, the laws and regulations governing the judicial organization, the principal administrative laws, and summaries of the jurisprudence of the Supreme Court of Peking and certain superior tribunals.

There have already appeared French translations of the regulation governing penal procedure of November 14, 1921, and the provisional penal code of

March 30, 1912, as modified by certain later acts and decrees. It is announced that there are in press the commercial laws and regulations, the regulations of civil procedure, and the constitutional laws, and that there are in preparation the laws and regulations governing judicial organization, and certain miscellaneous laws.

The series of French translations is on sale at La Librairie Française, Peking. The price of the two pamphlets already issued is given at \$1.20 each.

Documents pour servir à l'Histoire du droit des gens. By Dr. Karl Strupp. Berlin: Herman Sack, 1923. 5 vols.

This series is a second edition, considerably enlarged, of the work which appeared under the German title *Urkunden zur Geschichte des Völkerrechts* in two volumes and two supplements in 1911, 1912 and 1916.

The original edition was favorably reviewed in this JOURNAL, Vol. 6 (1912), pp. 1041-1045.

The contents of the series is as follows: Volume I, 127 documents from the earliest times to the Congress of Berlin, 1878; Volume II, from the Berlin Congress to the outbreak of the World War, 1878-1914; Volume III, the World War and its settlement, 1914 to 1919; Volume IV, 21 documents, including the Versailles treaty and other treaties, conventions and documents having relation thereto; Volume V, 54 documents, part of them in continuation of the settlement of the World War and part relating to other matters, bringing the publication down to and including the treaties of the Washington Conference, 1922.

Woodrow Wilson's Case for the League of Nations: Compiled by Hamilton Foley. Princeton: University Press. 1923. pp. 271. Price \$1.75.

The contents of this book may be best described in the words of the compiler who states that it is "A compilation of President Wilson's official and detailed explanation of the League of Nations Covenant and of the Treaty of Versailles, made to the Foreign Relations Committee of the Senate, and to the people of the United States, when the Treaty was before the Senate in 1919." In further explanation, Mr. Foley says, "I have taken sentences pertaining to each section of the Treaty and of the League, to World Problems and to World Peace, of which he made mention, and so combined them that within the pages of this book may be found President Wilson's personal, comprehensive and detailed explanation." The volume is, therefore, not a brief prepared by the compiler, but, as he states, "every word is Mr. Wilson's own word, and all are here used in explanation of that detail of the subject in which he used them."

In undertaking the work the author had before him a task the difficulties of which might have caused some skepticism as to its successful accomplishment had he not underwritten his own judgment and discretion in making

these selections with a letter of approval from Mr. Wilson, bearing date April 26, 1923, a facsimile of which is printed in front of the book.

The Senate documents containing the report of the conference between members of the Senate Committee on Foreign Relations and President Wilson at the White House in August, 1919 (S. doc. No. 76, 66th Cong. 1st sess.), and the addresses delivered by President Wilson on his western tour in September, 1919 (S. doc. No. 120, 66th Cong. 1st sess.), have an aggregate of about 225,000 words. The substance of these documents has been reduced in Mr. Foley's compilation to approximately 52,000 words, or something less than one-eighth of the original material. By appropriate chapter and paragraph headings, the author has produced substantially a digest in President Wilson's own words under the various topics into which the general subject is divisible. In this respect the book will prove a handy reference manual to anyone interested in President Wilson's views, whether he be in accord with or opposed to them.

In appendices are reprinted President Wilson's addresses at the Paris Peace Conference on January 25 and February 14, 1919, together with a list of the American advisers at the Peace Conference, and cablegrams sent to President Wilson at Paris by former President Taft and the Honorable Elihu Root, regarding modifications of the Covenant. The text of the Covenant of the League of Nations completes the book.

The book might have been improved mechanically by the use of footnotes or other suitable device giving references to the speeches from which the selections were taken, and so relieved the inquisitive reader of long searching through the original material.

L'Oeuvre de la Société des Nations (1920-1923). By Leon Bourgeois. Paris: Payot. 1923. pp. 456. Price 25 fr.

This work by the permanent delegate of France to the League of Nations contains a comprehensive résumé of the work of the League of Nations during the first three years of its existence. The work is divided into two parts, preceded by an introduction and a conclusion.

The first part contains an account in narrative form of the meetings of the Council and Assembly of the League during the years 1920, 1921 and 1922. Where available to describe the work of the League, M. Bourgeois has inserted the text of addresses, communications and reports made by him upon the subject. For instance, to describe the work of the League during the year 1920, there is reprinted the communication made by M. Bourgeois on January 24, 1921, to the Commission on Foreign Affairs of the French Senate.

In the second part of the volume, the author treats by subject the various matters that have constituted the work of the League of Nations. He describes the organization and work of the Permanent Court of International

Justice, the political questions that have come before the League, the subjects of mandates and armaments, and he outlines the work of the technical organizations and the social and humanitarian work of the League. His final chapter deals with the jurisprudence of the Council and Assembly of the League.

In many cases the author has inserted the actual texts of important resolutions of the League and reports adopted by it.

The subject of M. Bourgeois' work is so extensive that a brief indication of its contents is all that may be included within the compass of a review of it. Those students of the League of Nations who must refer to the numerous and varied publications of the League for authentic information as to its extensive activities will find the volume by M. Bourgeois a useful compendium.

Legislative Series of the International Labour Office. The International Labour Office of the League of Nations at Geneva, is now publishing a series of volumes known as the Legislative Series. As the title implies, the series contains collections of laws, orders and regulations affecting labor throughout the world.

The first volume covers the year 1920, and contains 26 Austrian documents, 15 Belgium documents, 1 Bolivian and 2 Brazilian documents, 1 document each of Bulgaria, Colombia and Costa Rica, 8 documents of Czecho-Slovakia, 4 each of Denmark and Finland, 33 French documents, 1 of Georgia, 28 German documents, 13 British documents, 6 of Greece, 3 of Hungary, 9 of Italy, 2 of Lithuania, 4 of Luxemburg, 8 of The Netherlands, 24 Norwegian documents, 3 of Poland, 4 of Roumania, 1 each of Russia and the Serbo-Croat-Slovene Kingdom, 16 Spanish documents, 8 of Switzerland, 1 of the United States of America, and 6 of Uruguay. The subjects most numerous treated in these many documents are accident compensation, arbitration and conciliation, the employment of women and children, the regulation of dangerous, unhealthy and noxious trades, sanitation, inspection service, old age and disability insurance, hours of labor, trade unions and wages. In addition to the documents of a national character, the 1920 volume contains the convention of September 3, 1919, between France and Poland respecting emigration and immigration, and the similar convention between France and Czecho-Slovakia of March 20, 1920; the labor treaty of September 30, 1919, between France and Italy and the similar treaty between Italy and Luxemburg of November 11, 1920. There are a few other international conventions in the volume.

The volume covering the year 1921 has been issued in two parts. It contains four international conventions dealing with miners' pensions between France and Belgium, unemployment benefits between Italy and Switzerland, accident insurance between Belgium and The Netherlands, and emigration and employment between Italy and Brazil. The national docu-

ments include one of Argentina, 6 of Austria, 4 of Belgium, 1 of Brazil, 2 of Chile, 1 of Colombia, 6 of Czecho-Slovakia, 9 of Denmark, 1 each of Ecuador and Esthonia, 2 of Finland, 6 of France, 7 of Germany, 11 of Great Britain, 2 each of Greece, Hungary, and Iceland, 5 each of Italy and Japan, 1 of Mexico, 4 of The Netherlands, 2 of Norway, 10 of Poland, 2 of Roumania, 1 of South Africa, 4 of the Serbo-Croat-Slovene Kingdom, 1 of Spain, 3 of Sweden, 2 of Switzerland, 3 of Tunis, 2 of the United States, and 1 of Uruguay.

The volumes sent to the JOURNAL for notice are printed in English, and bear the imprint of Harrison & Sons, Ltd., St. Martin's Lane, W. C. 2, London, England.

Transactions of the Grotius Society. Volume IX of the *Transactions of The Grotius Society*, containing the papers read before the Society in the year 1923, has now appeared. The papers included in the volume are as follows: "A mediaeval pacifist—Pierre Du Bois," by W. S. M. Knight; "The use of poison gas in war," by Herbert F. Manisty; "Vienna in 1914," by Sir Maurice De Bunsen; "The Anglo-French Tunis dispute," by William Latey; "Transylvania," by Roland E. L. Vaughan Williams; "Private international law and bankruptcy and liquidation of companies," by Leslie Burgin; "Territorial waters," by C. J. Colombos; "Continuous voyage: The present position," by Thos. Baty; "Division of states: Its effect on obligations," by Thos. Baty; "The treatment of prisoners of war," by Lieut.-General Sir Herbert Belfield; "Military occupation of alien territory in time of peace," by F. Llewellyn Jones.

The volume contains 163 pages, and is published by Messrs. Sweet and Maxwell, Ltd., 3 Chancery Lane, W. C. 2, London. The price to non-members of the Society is 7s. 6d.

The Saar Controversy. Pursuant to its custom of issuing monographs from time to time upon important international law subjects of current interest, the Grotius Society has issued publication No. 2 dealing with the Saar Controversy, by Dr. W. R. Bisschop. The monograph contains a preface by the Right Hon. Lord Phillimore, commending the work as a "thoughtful and learned essay which should make a valuable contribution towards the materials for a final decision." As annexes to the monograph the author reprints the letter of Mr. Bernard M. Baruch to President Wilson, dated April 9, 1919, on the subject of the French ownership of the coal mines of the Saar, a section from R. S. Baker's *Woodrow Wilson and World Settlement* on the subject of French ambitions, and the speeches made by Lord Robert Cecil, Mr. Hanotaux and Mr. Branting in the Council of the League of Nations on July 2, 1923.

The volume contains an index, and is published by Messrs. Sweet and Maxwell, Ltd., 3 Chancery Lane, W. C. 2, London. The price is 7s. 6d.

Naval War College International Law Documents. In this volume, bearing the imprint of the Government Printing Office at Washington, 1923, the Naval War College has reprinted the documents relating to the Conference on the Limitation of Armament, at Washington, with notes and index. The volume contains President Harding's invitations to the Powers to take part in the Conference, the agenda of the Conference, the proposal of the United States for a limitation of naval armament, the minutes of the meetings of the Committee on Limitation of Armament, the report of the American Delegation to the President of the United States, and the treaties and resolutions approved and adopted by the Conference. The latter are given in the English and French languages in parallel columns. Copies of the book may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D. C., at 75 cents per copy.

Bibliotheca Visseriana dissertationum ius internationale illustrantium. The second volume in this series has appeared under date of 1924. The first volume was noticed in this JOURNAL for October, 1923, page 839. The present volume contains three papers; the first, by Sir John Fischer Williams entitled "International law and international financial obligations arising from contract." The paper is made up of three lectures delivered in August, 1923, before the Hague Academy of International Law. The second paper is entitled "La Responsabilité des États," and contains the lectures also delivered before the Academy of International Law at The Hague in July, 1923, by Prof. Charles de Visscher. The third paper is entitled "Les fleuves et canaux internationaux," by Jonkheer W. J. M. Van Eysinga, likewise delivered before the Academy of International Law at The Hague, in July, 1923. The paper by Sir John Fischer Williams is printed in English, and those by Professors de Visscher and Van Eysinga in French.

Germany and Europe. By Count Harry Kessler. This is a publication of the Yale University Press, containing the lectures delivered at the Institute of Politics, Williamstown, Mass., in July and August, 1923, by the former German Minister to Poland. The lectures were six in number, and were entitled as follows: "The Fruits of the War and the Fruits of Peace," "The Peacemakers at Work," "The Fruits of Versailles," "Security," "The Ruhr and After," "National and International Democracy." The volume contains 150 pages, and is sold for \$2.00.

*Books Received*¹

Aaland Islands. *La décision de la Société des Nations concernant les îles d'Aland.* Thesis of Dr. H. A. Colijn of the University of Amsterdam. Amsterdam: Drukkerij Holland. 1923. pp. xxi, 185. Maps.

¹ Mention here does not preclude an extended notice in a later issue of the JOURNAL.

The American Constitution as it protects Private Rights. Frederick J. Stimson. New York: Charles Scribner's Sons. 1923. pp. xv, 239. \$2.50.

Archiv der Friedensverträge, Band 1. Mannheim: J. Bensheimer. 1923. pp. 258.

Carélie. *Documents publiés par la Délégation Carélienne*: Livre Vert, Actes et documents concernant la question Carélienne (1922), pp. 227; *Le droit de la Carélie*, pp. 108, map; *Avis des jurisconsultes étrangers sur la question de la Carélie Orientale* (1922-1923), pp. 239.

Chile ante el Arbitro, su conducta desde 1820. Ismael Portal. Lima: Libreria e Imprenta Gil. 1924. pp. 219.

China: Yesterday and Today. Edward Thomas Williams. New York: Thos. Y. Crowell Co. 1923. pp. xvii, 613. \$4.00.

The Freedom of the Seas in History, Law and Politics. Pitman B. Potter. New York: Longmans, Green & Co. 1924. pp. xvi, 299. \$2.50.

The Ethics of Opium. Ellen N. La Motte. New York: The Century Co. 1924. pp. 205. \$1.75.

Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung. Alfred Verdross. Tübingen: J. C. B. Mohr. 1923. pp. xii, 171.

The Decadence of Europe. Francesco Nitti. New York: Henry Holt & Co. 1923. pp. xlii, 302. \$3.00.

Contemporary French Opinion on the American Civil War. W. Reed West. Johns Hopkins University Studies in Historical and Political Science. Baltimore: The Johns Hopkins Press. 1924. pp. viii, 159. \$1.50.

Considérations sur la Guerre Mondiale. Th. Von Bethmann-Hollweg. Paris: Charles Lavauzelle & Co. 1924. pp. x, 363.

Let France Explain. Frederick Bausman. London: George Allen & Unwin, Ltd. pp. 264. 8s. 6d.

Internationales Privatrecht. Karl Neumeyer. Enzyklopädie der Rechts- und Staatswissenschaft, XV. Berlin: Julius Springer. 1923. pp. vi, 34.

International Commercial Policies. Geo. M. Fisk and Paul S. Peirce. New York: The Macmillan Co. 1923. pp. xii, 322.

Government and the Will of the People. Academic lectures by Hans Delbrück. Translated into English with notes and glossary of political names and terms by Roy S. MacElwee. New York: The Oxford University Press, American Branch. 1923. pp. xiii, 192. \$3.50.

The Problem of Armaments. Arthur Guy Enock. New York: The Macmillan Company. 1923. pp. xii, 196. \$1.50.

- The Ordinance Power of the Japanese Emperor.* Tomio Nakano. Johns Hopkins University Studies in Historical and Political Science. Baltimore: The Johns Hopkins Press. 1923. pp. xviii, 269. \$2.50.
- The Oil Trusts and Anglo-American Relations.* E. H. Davenport and Sidney Russell Cooke. New York: The Macmillan Co. 1924. pp. xii, 272. Maps. \$2.50.
- Mussolini as revealed in his political speeches (November, 1914–August, 1923).* Selected, translated and edited by Barone Bernardo Quaranta di San Severino. New York: Dutton & Co. 1923. pp. xxviii, 375. \$3.50.
- The main issues confronting the minorities of Latvia and Eesti.* Baron A. Heyking. London: P. S. King & Son, Ltd. 1922. pp. 45.
- Le Problème des Minorités devant le Droit international.* Jean Lucien-Brun. Paris: Editions Spes. 1923. pp. xv, 230. 15 fr.
- The Régime of the International Rivers: Danube and Rhine.* J. P. Chamberlain. Studies in History, Economics and Public Law, edited by the Faculty of Political Science of Columbia University. Vol. CV, No. 1. New York: Columbia University. 1923. pp. 317. \$3.50.
- The Romance of the Law Merchant.* W. A. Bewes. London: Sweet and Maxwell, Ltd. 1923. pp. ix, 148.
- Russia and Peace.* Dr. Fridtjof Nansen. New York: The Macmillan Co. 1924. pp. 162. \$2.00.
- The Sources of Law in the Swiss Civil Code.* Ivy Williams. New York: The Oxford University Press, American Branch. 1923. pp. 199. \$2.50.
- Traité Pratique de Droit International Privé.* Antoine Pillet. Tome I. Paris: Librairie de la Société du Recueil de Sirey. 1923. pp. viii, 789. 50 fr.
- Union Interparlementaire. Compte rendu de la XXI^e Conférence Interparlementaire.* Copenhagen, Aug. 15–17, 1923. Geneva: Bureau Interparlementaire. 1923. pp. xx, 437.
- Die völkerrechtswidrige Kriegshandlung und der Strafanspruch der Staaten.* Dr. Alfred Verdross. Berlin: Deutsche Verlagsgesellschaft für Politik und Geschichte. 1920. pp. 115.

PERIODICAL LITERATURE ON INTERNATIONAL LAW SUBJECTS¹

Aerial law. L'état actuel du droit aérien. G. Ripert. *Journal du droit international.* Août-Sept.-Oct. 1923, p. 775.

———. The law of Aviation. Edmund F. Trabue. *American Law Review*, Jan.-Feb. 1924. LVIII:65.

Aeronautical diplomacy. Clifford Albion Tinker. *North American Review*, Mar. 1924. 219:336.

Air bombardment. J. M. Spaight. *British Year Book of International Law*, 1923-1924, p. 21.

Alien enemy property. De la distinction du national et du ressortissant à l'occupation du séquestre et de la liquidation du domaine de Chambord. E. Audinet. *Journal du droit international.* Août-Sept.-Oct. 1923, p. 785.

American claims against Germany. Joseph Conrad Fehr. *North American Review*, Jan. 1924. 219:8.

American conferences. Primeros Congresos y Conferencias americanos. Francisco José Urrutia. *Revista de Derecho Internacional*, Mar. 31, 1924. V:43.

American-Japanese relations. Japan in a quandary. K. K. Kawakami. *North American Review*, Apr. 1924. 219:474.

Arbitral awards. L'exécution des sentences arbitrales en Angleterre. Hugh H. L. Bellot. *Journal du droit international.* Août-Sept.-Oct. 1923, p. 797.

Arbitration. La clause compromissoire dans les rapports de commerce internationaux. Joseph Hamel. *Revue de droit international privé*, 1922-23. XVIII:721.

———. La clause compromissoire et l'arbitrage dans les rapports internationaux. Maurice Picard. *Journal du droit international.* Mai-Juin-Juillet 1923, p. 508.

Arbitrations, international, under the Treaty of St. Germain. "O." *British Year Book of International Law*, 1923-1924, p. 124.

¹Limited to articles published in periodicals exchanged with the AMERICAN JOURNAL OF INTERNATIONAL LAW.

Associations internationales, La condition juridique des. N. Politis. *Journal du droit international*. Mai-Juin-Juillet 1923, p. 465.

Bed of the sea, Whose is the? Sir Cecil J. B. Hurst. *British Year Book of International Law*, 1923-1924, p. 34.

Chinese Government, The crisis of the. Charles Denby. *North American Review*, Mar. 1924. 219:301.

Codification del derecho internacional. James Brown Scott. *Revista de Derecho Internacional*, Mar. 31, 1924. V:5.

Continuous voyage—The present position. Thos. Baty. *Transactions of The Grotius Society*, 9:101.

Corporations, The national character and status of. Arnold D. McNair. *British Year Book of International Law*, 1923-1924, p. 44.

Criminal jurisprudence, American and European. Hacker Ervin. *Journal of Criminal Law and Criminology*. Feb. 1924. XIV:589.

Democracy, The rise and fall of. Elcanon Isaacs. *American Law Review*, Nov.-Dec. 1923. LVII:893.

Domicile as a test of enemy character. Malcolm M. Lewis. *British Year Book of International Law*, 1923-1924, p. 60.

Du Bois, Pierre—A mediaeval pacifist. W. S. M. Knight. *Transactions of The Grotius Society*. 9:1.

Economic policies of the United States. III. Protection or prosperity. C. Reinold Noyes. *North American Review*, Feb. 1924. 219:193.

England after the election. W. G. S. Adams. *Foreign Affairs*, Mar. 15, 1924. 2:351.

Equality of states, The doctrine of. P. J. Baker. *British Year Book of International Law*, 1923-1924, p. 1.

Exterritorialité en Chine, Le probleme de l'. Jean Escarra. *Revue de droit international privé*, 1922-23. XVIII:693.

Fertilizers: The world supply. Harry A. Curtis. *Foreign Affairs*, Mar. 15, 1924. 2:436.

Foreign service of the United States. Alfred L. P. Dennis. *North American Review*, Feb. 1924. 219:178.

Franco-German relations. Versöhnungsoffer des deutschen volkes an das französische volk. Lilli Jannasch. *Friedens-Warte*, Sept.-Oct. 1923. 23:314.

———. "When Germany occupied France." A rejoinder. Stéphane Lausanne. *North American Review*, Feb. 1924. 219:209.

Gandhi, Mahatma. Romain Rolland. *Friedens-Warte*, Sept.-Oct. 1923. 23:317.

Germany and the League. Count von Bernstorff. *Foreign Affairs*, Mar. 15, 1924. 2:390.

Instituto de Derecho Internacional. Sus bodas de oro y la sesion de Bruselas, 1873-1923. Pedro Martinez Fraga. *Revista de Derecho Internacional*, Mar. 31, 1924. V:72.

International interpretation of national case law. W. R. Bisschop. *British Year Book of International Law*, 1923-1924, p. 131.

International mind. El desenvolvimiento del espiritu nacional. Nicholas Murray Butler. *Revista de Derecho Internacional*, Mar. 31, 1924. V:29.

Italian colonial policy. Carlo Schanzer. *Foreign Affairs*, Mar. 15, 1924. 2:446.

Japan's new policy in Korea and Formosa. Ralston Hayden. *Foreign Affairs*, Mar. 15, 1924. 2:274.

Lausanne treaty. Le traité de Lausanne et les intérêts privés. André-Prudhomme. *Journal du droit international*. Août-Sept.-Oct. 1923, p. 753.

League of Nations. Noch einmal die Volkerbundarmee. D. Berthold v. Deimling. *Friedens-Warte*, Sept.-Oct. 1923. 23:300.

———. The law of reprisals as affected by the League treaty (concluded). Thos. H. Black. *Canadian Bar Review*, Dec. 1923. 1:825.

Lenin, Victor Chernov. *Foreign Affairs*, Mar. 15, 1924. 2:366.

Liquor. El transporte de licores y el derecho internacional. Frederic R. Coudert. *Revista de Derecho Internacional*, Mar. 31, 1924. V:64.

Mandate over Nauru Island. A. H. Charteris. *British Year Book of International Law*, 1923-1924, p. 137.

Memel controversy. John A. Gade. *Foreign Affairs*, Mar. 15, 1924. 2:410.

Military occupation of alien territory in time of peace. F. Llewellyn Jones. *Transactions of The Grotius Society*. 9:149.

Minorities, The protection of. Ifor L. Evans. *British Year Book of International Law*, 1923-1924, p. 95.

Monroe Doctrine, The future of the. C. *Foreign Affairs*, Mar. 15, 1924. 2:271.

Nationality. La perte de la nationalité française et la prise de service militaire en pays étranger. André-Prudhomme. *Journal du droit international*. Mai-Juin-Juillet 1923, p. 488.

Peace, The law of. A. Pearce Higgins. *British Year Book of International Law*, 1923-1924, p. 153.

Permanent Court of International Justice. Opinions of the international courts. Manley O. Hudson. *American Bar Association Journal*, Feb. 1924. X:117.

———. Problem of the International Court today. Manley O. Hudson. *American Bar Association Journal*, Jan. 1924. X:13.

Poison gas in war, The use of. Herbert F. Manisty. *Transactions of The Grotius Society.* 9:17.

Prisoners of war, The treatment of. Lieut.-General Sir Herbert Belfield. *Transactions of The Grotius Society.* 9:131.

Private international law and bankruptcy and liquidation of companies. Leslie Burgin. *Transactions of The Grotius Society.* 9:71.

Privy Council, Appeals to the. H. W. Newlands. *Canadian Bar Review*, Dec. 1923. 1:814.

Prize case notes in the days of Stowell. C. J. B. Gaskoin. *British Year Book of International Law*, 1923-1924, p. 78.

Reparations and sanctions. Chas. Robinson Smith. *North American Review*, Feb. 1924. 219:160.

———. Bisherige und künftige reparationsleistungen. Dr. R. Kuczynski. *Friedens-Warte*, Nov.-Dec. 1923. 23:368.

———. Reparation problem today. George P. Auld. *Foreign Affairs.* Special Supplement to Vol. II, No. 3.

Rhineland. Le régime juridictionnel de l'occupation alliée en Rhénanie. J. Rousseau. *Journal du droit international*, Août-Sept.-Oct. 1923, p. 805.

Russia at the cross-roads. Boris Bakhmeteff. *Foreign Affairs*, Mar. 15, 1924. 2:421.

Spain, New régime in. R. T. Desmond. *Foreign Affairs*, Mar. 15, 1924. 2:457.

States, Division of. Its effect on obligations. Thos. Baty. *Transactions of The Grotius Society.* 9:119.

Switzerland in the League of Nations, The position of. R. B. Mowat. *British Year Book of International Law*, 1923-1924, p. 90.

Taxation. Le récent impôt hellénique sur la fortune mobilière et immobilière et les étrangers dans le domaine du droit fiscal international. C. G. Ténékidés. *Journal du droit international*. Mai-Juin-Juillet 1923, p. 500.

Territorial sea, The. Martin Conboy. *Canadian Bar Review*, Jan. 1924. 11:8.

Territorial waters. C. J. Colombos. *Transactions of The Grotius Society*. 9:89.

Transylvania. Roland E. L. Vaughan Williams. *Transactions of The Grotius Society*. 9:61.

Tunis, The Anglo-French dispute. William Latey. *Transactions of The Grotius Society*. 9:49.

War damages. Les étrangers et la loi des dommages de guerre. Marcel Oudinot. *Journal du droit international*. Mai-Juin-Juillet 1923, p. 520.

War debts, external and internal. Allyn A. Young. *Foreign Affairs*, Mar. 15, 1924. 2:397.

World War. Die grosste Dummheit. Richter Raimund Eberhard. *Friedens-Warte*, Nov.-Dec. 1923. 23:362.

———. Neues zur Schuldfrage. Dr. Heinrich Kanner. *Friedens-Warte*, Nov.-Dec. 1923. 23:384.

———. Vienna in 1914. Sir Maurice De Bunsen. *Transactions of The Grotius Society*. 9:29.

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THE QUESTION AS TO THE LEGALITY OF THE RUHR OCCUPATION

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The question as to the legality of the Ruhr occupation is partly a question of fact and partly a question of law. It is common ground that the measures taken by the French and Belgian troops in the Ruhr valley could not have been authorized by the Treaty of Versailles if the Reparation Commission had not found as a fact that there had been "voluntary default" (*manquement volontaire*) on the part of Germany. The question as to whether or not such voluntary default had in fact taken place is not one of those which under Sec. 13 of Annex II to Part VIII of the treaty requires a decision to be taken by a unanimous vote, and as the decision on that point was actually taken by a majority of three to one, the discussion as to the legality of the measures taken in consequence of such decision must proceed on the footing that "voluntary default" on the part of Germany had been established to the satisfaction of the Reparation Commission. The fact that Sir John Bradbury, the British representative on the Commission, gave an adverse vote cannot, however, be left out of consideration, as it proves that at least one eminent expert who, as the representative of his country, was bound to do his best to secure the payment of reparations from Germany, was of opinion that no voluntary default on Germany's part had been proved. The doubt thus thrown on the fact on which the application of sanctions depended ought to have been an additional reason for the utmost care in the endeavor to apply only such sanctions as were clearly provided for by the Treaty of Peace. I propose to show in the following pages that if that care had been applied the occupation of the Ruhr valley would not have taken place.

The frequently discussed Sec. 18 of Annex II, by which the French and Belgian Governments,¹ support their case runs as follows:

¹ The fact that the Italian Government sent a few engineers who only remained a short time hardly justifies an allusion to the measures taken in the Ruhr as measures taken by France, Belgium and Italy. The Italian Government seems to have been under the impression that the occupation of the Ruhr would be nothing more than an "economic measure"; as soon as they became aware of the real nature of the occupation they withdrew. (See the letter of the Marquis de la Torretta to Lord Curzon, dated August 2, 1923, p. 47, *Correspondence with Allied Governments respecting Reparation Payments*, where it is stated that the Italian Government have repeatedly and publicly asserted their views "against any further occupation of the Ruhr.")

The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals² and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

The main controversy turns upon two questions, namely: (1) Must the measures to be taken in case of voluntary default be determined on by the aggrieved Powers jointly, or may any aggrieved Power act independently of the others? (2) Must the measures to be taken be similar in their nature to economic and financial prohibition and reprisals?

Before, however, dealing with these questions, it is necessary to consider the effect of the section which immediately precedes Sec. 18 and which makes it necessary for the Reparation Commission to inform the interested Powers of Germany's default, adding its proposals as to the measures which ought to be taken by reason of such default. This is not quite clearly expressed by the English version which declares that the Commission "*may* make such recommendations as to the action to be taken in case of default as it may think necessary," but the French version declares that the Reparation Commission must immediately communicate the default to each of the interested Powers "*en y joignant toutes propositions qui lui paraîtront opportunes au sujet des mesures à prendre en raison de cette inexécution.*"

The fact that no proposals as regards the measures to be taken in consequence of the default in question were made by the Reparation Commission may appear to be of no importance, as the measures which were actually taken were in fact decided on by the Powers whose representatives formed the majority of the Reparation Commission, but—even apart from the consideration that the attitude of Italy in regard to military action makes such a claim untenable—this view of the matter disregards an important fact. If the measures to be taken had been discussed by the Reparation Commission and the British view which disputed the legality of the Ruhr invasion had on that occasion been put forward, a question would have arisen as to the interpretation of the Treaty of Peace, which question, according to Sec. 13 (f) of the said annex, could only have been decided by the unanimous vote of the delegates.

I am aware of the fact that Sir John Bradbury expressed the opinion that the Commission had only a power to make recommendations and was not obliged to make them,³ but I do not see how any meaning can be given to the French version other than that proposals as to the measures to be taken must accompany the notification. In any case, Sir John Bradbury, while

² The words "economic and financial" qualify the word "reprisals" no less than the word "prohibitions." The French text: "*actes de prohibitions et de représailles économiques et financières*" makes this quite clear.

³ See Report of the work of the Reparation Commission from 1920 to 1922, p. 257.

referring to this subject, emphasizes the fact that the question as to the measures to be taken depended on the interpretation of Sec. 18 and states this is "a question of vital importance for the peace of Europe *which could only be decided by the unanimous vote of the Commission.*"⁴

It follows accordingly that, if the question of making recommendations had been discussed, the Commission would have had either to be unanimous as to the interpretation of paragraph 18, or there would have been a difference of opinion as to whether a recommendation (which would of necessity have implied an interpretation of that paragraph) could have been carried by a majority. In the latter case it would have been necessary to refer the matter to "immediate arbitration" before resorting to the measures in question, and in respect of this point alone the independent action of France and Belgium appears to be a violation of the Treaty of Peace; but quite apart from this, paragraph 18 does not, in my opinion, justify separate action on the part of one or more of the interested Powers.

According to the ordinary grammatical rules, a power given to several persons collectively without any further indication must be construed as exercisable by these persons and cannot be construed as exercisable by one or more of them alone. The section defines the measures "which the Allied and Associated Powers have the right to take." If these words stood alone there could be no doubt in the matter; the right of separate action is contended for on the mere ground that (within the limits laid down by the paragraph the extension of which will be discussed below), it is left to the "respective governments" to decide on these measures, but the use of the word "respective" is justified by the fact that the words quoted above refer to certain Powers while the words at the end of the paragraph refer to governments, that is to say, to the governments of the Powers which are referred to. The governments, like the Powers, are referred to in the plural without any distributive qualification, and their action, according to the literal meaning of the sentence, must therefore be collective action.

I do not, however, attach much importance to this interpretation of the section according to the strict rules of grammar. The treaty must be construed so as not to defeat any of the objects which it was intended to carry out, and if the literal interpretation of the paragraph made its application unworkable I should willingly admit that the construction contended for by supporters of the legality of the French-Belgian action ought to be applied; but I think that, on the contrary, the paragraph, not only according to its words, but also according to its clear implication, contemplates joint action. The "circumstances" necessitating action in the event of "voluntary default" on the part of Germany are circumstances affecting all the Powers entitled to reparations, and it is upon these circumstances that the choice of the measures of execution is to depend. If it were left to each of the Powers to select such measures of execution as would suit its

⁴ *Loc. cit.*, p. 267.

own purposes, these measures of execution might conflict with one another, or neutralize one another. Even if one or two of the Powers act alone, the interests of the other Powers may be seriously injured by the fact that the measures actually taken disturb to such an extent the working of German industry and commerce that the possibility of obtaining adequate reparations is seriously diminished instead of being increased. If the governments concerned in the matter have to decide collectively on the measures of execution required in the case of "voluntary default" on the part of Germany, care will be taken that the interests of all the Powers and more particularly their rights as to reparations are safeguarded.

The objections to isolated action against an enemy Power on the part of one of the Allied and Associated Powers are very clearly put forward in the note of the Supreme Council dated 23 August, 1919, having reference to the seizure of Hungarian property on the part of Roumania. The following passage is specially significant:

Le Gouvernement roumain en raison de sa participation dans les travaux de la Conférence de la Paix et comme un des signataires du traité de paix avec l'Allemagne, ne devrait cependant pas ignorer le soin qu'ont apporté les Puissances alliées et associées à établir un plan rationnel de réparations. *Si le principe que le dédommagement pour les pertes subies avait dû dépendre seulement de facteurs tels que la proximité des biens ennemis ou du résultat d'une concurrence entre les Etats alliés pour se rendre maîtres de ces biens, des injustices flagrantes et des désaccords sérieux en auraient été le résultat inévitable.*⁵

One of the arguments used by the politicians and the jurists who argue in favor of the power of isolated action on the part of one or several of the Allied and Associated Powers relies on the fact that the obstructive opposition of one of the Powers might prevent measures of enforcement which are called for in the circumstances of the case. This argument may be met by the obvious retort that in the case of such obstructive opposition the Reparation Commission as such could clearly step in and dispose of the matter by a majority vote unless a difference of opinion as to the interpretation of the Treaty is disclosed, in which case speedy arbitration would, as mentioned above, have to be resorted to.

It is argued that the British Government is "estopped" from supporting the contention denying the right of one or more of the Powers to independent action on the ground that Great Britain "was the first of the Allies to claim and exercise the right of separate action under Sec. 18." The action of the British Government thus referred to is also mentioned very prominently in an article which appeared in the *Temps* on the 10th March, 1923. The claim to act independently was no doubt made by Mr. Austen Chamberlain in the British House of Commons on the 28th October, 1920, in reply to some objection against the renunciation of the right to seize property

⁵ The italics are the writer's.

situate in England belonging to German nationals which the British Government had agreed to, but a claim on the part of one of the Powers to renounce rights of enforcement is not *in pari materia* with a claim to exercise rights of enforcement by isolated action. Mr. Chamberlain, no doubt, when questioned on the matter expressed his personal opinion to the effect that under Sec. 18 each Power was entitled to act separately, but no controversy on the subject arose on that occasion between the signatories of the treaty and there could, therefore, have been no question of estoppel as between Great Britain and the other Allied and Associated Powers. Even if Great Britain were "estopped" from protesting against isolated action, this could not in any way affect the question as to the legality of the Ruhr occupation, as this is a matter between France and Belgium, on the one side, and Germany on the other side.

Mr. Austen Chamberlain when questioned at a later date on the subject of the possibility of isolated French action did not adhere to his previous statement as to the legal position. Replying to an enquiry made by Lieutenant-Commander Kenworthy on the 18th May, 1922, he said: "No fresh assurances have been given or asked because none are required. Should the Reparation Commission report that Germany is in default *it will be necessary for the Allied Governments to confer together as to the action to be taken,*" and in reply to a supplementary question he said:

After the occupation of Frankfurt, I think it was in April 1920, we received from the French Government the following declaration: "that as regards the future the Government of the Republic repeat that in all inter-Allied questions raised by the execution of the Treaty of Versailles *there is no intention of acting save in accordance with its Allies.*"

A few days afterwards (25 May) Capt. W. Benn asked "whether the Government had received any assurance from the French Government that in the exercise of the rights conferred by Sec. 18, Annex 2, Part VIII of the Treaty of Versailles the French Government would not act save in accordance with the Allies," and Mr. Chamberlain said in reply:

I should refer the hon. and gallant member for Central Hull to the answer which I gave on the 18th instant. That answer is now the subject of correspondence with the French Government, and in the circumstances I should prefer not to make any fresh statement at the present time.

On the 23rd July, 1922, Lieutenant-Commander Kenworthy referred again to the same matter and the then Prime Minister, Mr. Lloyd-George, said:

In the course of the conversation which I had with M. Poincaré here on the 19th June he expressed the hope that further sanctions if they had to be applied would be applied in common.

In the meantime, the *Temps* of May 21, 1922, had published a correspondence between M. Klotz and M. Poincaré, in the course of which the

latter had stated in effect that the undertaking given on the occasion of the occupation of Frankfurt related to action which he had taken under the general rules of international law and that this undertaking "had no connection with any action which might in the future be taken under Sec. 18 of Annex II as the result of a report of the Reparation Commission (see an article in the *Daily Telegraph* of the 6th August, 1923).

It seems fairly clear that the undertaking given in 1920 was of a vague nature and did not show whether it prevented *all* isolated action, or only isolated action of the same nature as the occupation of Frankfurt, but it seems also clear that the representatives of the British Government in their replies in the House of Commons showed that in their view the undertaking referred to action pursuant to the Treaty of Versailles no less than to all other isolated action.

There remains the question whether, on the assumption that isolated action was at all permissible, the action actually taken was one of the measures contemplated and permitted by Sec. 18. The jurists who deny the legality of the Ruhr occupation rely in this respect on a rule of construction which, for the sake of brevity, is called the *ejusdem generis* rule. The applicability of this rule is contested: (1) on the ground that it does not apply outside of the area governed by rules derived from the English common law; (2) that it does not apply to international treaties; (3) that even in the countries in which the rules of the English common law prevail the rule is of limited application and that it has no value in statutes conferring discretionary powers on the judiciary or public functionaries.

As regards the last point it must be pointed out that the question whether such discretionary powers are given is in itself a question of construction, as to which the *ejusdem generis* may be and is frequently of valuable assistance. Where it is clear that an unfettered discretion exists, no further question can possibly arise. It is, of course, obvious that the rule in question cannot be applied indiscriminately. As stated in Maxwell, *Interpretation of Statutes* (6th ed. by W. Wyatt-Paine), on p. 592 "the restricted meaning which primarily attaches to the general words in such circumstances is rejected when there are adequate grounds to show that it was not used in the limited order of ideas to which its predecessor belongs." Cases can no doubt be quoted (Stroud's Dictionary supplies some examples), to illustrate the qualifications to which the rule is subject, but these qualifications do not detract from the usefulness of the general rule, which is not the product of the arbitrary exercise of judicial power, but, when stated in its precise significance, is a rule of construction applicable and applied in all countries and for the construction of any legal documents whether in the domain of public or of private law. It is indeed a mere corollary of the rule that the words contained in a statute or in any legal document are not to be construed in accordance with their literal meaning if such literal meaning is in conflict with the context and the general aim of such statute or legal docu-

ment. The principles on which this rule is based are admirably expressed by a French writer⁶ in the following sentences:

Quand le sens de la loi est douteux il faudra d'abord recourir à l'interprétation grammaticale qui a pour objet de déterminer le sens des mots et des phrases par l'application des règles du langage. Pour le sens des termes notamment il faut préférer leur signification technique à leur signification vulgaire et les entendre dans le sens qui se rapporte le mieux à la matière à propos de laquelle ils ont été employée (*secundum subjectam materiam*) . . . il faut ensuite appliquer les très-nombreux procédés de l'interprétation logique qui par la voie du raisonnement *et par dessus les mots* cherchent à parvenir jusqu'au centre de la pensée législative. On s'efforce alors d'obtenir l'interprétation de la formule légale *non plus par son seul secours mais à l'aide d'éléments externes très divers qui viennent en développer toute la signification. On rapproche en premier lieu le texte à interpréter des autres dispositions légales relatives au même objet ou à des objets analogues, toutes ces dispositions devant être supposées parfaitement cohérentes.* "Incivile est nisi totâ lege perspectâ—judicare—vel respondere" (Dig. de Legibus 1, 3, 24). Pour fixer le vrai sens d'une loi, disait l'article 6 du titre 5 du livre préliminaire, *il faut en combiner et réunir toutes les dispositions.*⁷

As regards the words contained in Sec. 18 authorizing certain measures of a specified kind and "such other measures as the respective governments may determine," the very width of the actual words implied suggests some limitation. If these words left an unfettered discretion to each of the Allied and Associated Powers in respect of any voluntary default reported on by the Reparation Commission, each of the Powers independently of the others could invade a separate part of Germany, introduce martial law, take prisoners and do other warlike acts, Germany being bound not to regard such acts "as acts of war." The very fact that Germany bound herself in this manner is alone sufficient to prove that the general words cannot be interpreted otherwise than in accordance with the *ejusdem generis* rule.

It is quite unthinkable that any Power, however pressed by the necessities of the situation, should declare that acts which are indisputably acts of war are in certain events not to be considered acts of war.

The fact that military occupation was not intended to be included among the measures to be taken by the Allied and Associated Powers in the case of wilful default on Germany's part is further proved by Articles 428-432, which regulate the occupation of German territory "as a guarantee for the execution of the treaty." It is significant that these articles are contained in the penultimate part of the treaty under the heading of "Guarantees," it being thus indicated that they are intended to secure the execution of all the parts of the treaty and that, in the absence of express provisions as to specified matters, they are the only "guarantees." It is suggested that

⁶ Baudry-Lacantinerie et Houques-Fourcade, *Traité théorique et pratique de droit civil*, 3rd ed. (1907), pp. 211-212.

⁷ The italics are the writer's.

Article 248 by its express terms establishes a special guarantee in respect of reparations. The said article declares that the cost of reparations (subject to any exception which may be approved by the Reparation Commission) shall be a "first charge upon all the assets and revenues of the German Empire" and the opinion appears in some quarters to be held that the existence of a charge in itself implies the unconditional right of physical seizure by an occupying army. If this view were correct the part relating to guarantees would be entirely superfluous. If the whole of the assets of the German Empire could at any time be seized by an occupying army, the conditions as to the occupation of territory contained in Articles 428-432 would have a merely decorative value. In my opinion, Article 248 does not confer any rights of seizure.

The context and the other parts of the treaty clearly indicate that the word "charge" in the English text of Article 248 is not used in the technical sense in which that expression is applied in the case of private transactions governed by English law. This fact is rendered quite indisputable by the use of the word "privilege" in the French text, which word implies rights of *priority* over other creditors, but does not in itself imply rights similar to those of a mortgagee or pledgee.⁸ The charge created by Article 248 imposes upon the German Government the duty: (a) not to deal with any of its assets or revenues otherwise than in the course of ordinary administration; (b) not to confer on any other creditors any rights having priority over the rights of the Allied and Associated Powers in respect of reparation claims. Subject to these restrictions, the German Government is free to apply its assets and its revenues to the ordinary purposes of government. (If this were not the case, it would be impossible to carry on the government at all.) The main object of the charge is to prevent the hypothecation of the assets and of the revenue of the German Empire to any other creditor. This is effectually prevented by the treaty itself, which must affect any possible creditor with notice of the right of priority of the Allied and Associated Powers in respect of reparation claims.

The argument to the contrary appears to be founded on the assumption that the treaty *must* contain stipulations which make the payment of reparations absolutely secure, and that accordingly Part XIV dealing with guarantees could not possibly impose any limits as to the area of possible military occupation. Thus in a note in this JOURNAL it was asked "Was Part XIV intended as a guarantee for the payment of reparations by Germany, or as a guarantee against further occupation of Germany?"⁹ The reply, in my opinion, does not admit of any doubt: Part XIV was intended as a guarantee, not only for the payment of reparations; but generally for the execution of the treaty and such guarantee was to be provided by the occupation of a large and important part of Germany during the periods speci-

⁸ See the French *Code Civil*, Arts. 2095-2113.

⁹ See editorial comment by Mr. George A. Finch, Vol. 17 (1923), pp. 724-733.

fied in the treaty, and—pursuant to Article 430—indefinitely in so far as the Reparation Commission finds that Germany is in default in regard to reparations.

Further support for this argument is sought by reference to the maxim incidentally referred to in a judgment of the United States Supreme Court¹⁰ to the effect that a treaty, like a law "should be so interpreted as to give effect to the object designed" and that "for that purpose all its provisions must be examined in the light of attending and surrounding circumstances." The doctrine thus laid down is indisputable and it is quite in conformity with the implication of the passage quoted above from the work of a distinguished French writer, and which is indeed the main foundation of the *ejusdem generis* rule, but when the object of a treaty is considered for that purpose, it is necessary to bear in mind that there are several parties to the treaty. From the point of view of the Allied and Associated Powers it was no doubt one of the objects to obtain adequate reparations from Germany and to secure the payment of reparations in the most effectual manner, but from the point of view of Germany it must have been a most important object to safeguard to the utmost possible extent her rights of sovereignty over the territory left to her. The German Government was therefore entitled to assume that her territory was not subject to occupation by the troops of any of the Allied or Associated Powers except to the extent expressly stipulated for by the guarantee clauses. The conflict of objects was, in fact, solved by these stipulations, and it is therefore not admissible to interpret the treaty from the one-sided point of view of the parties opposed to Germany.

According to the ordinary rules of international law, a treaty ought in case of doubt as to any of its provisions to be construed against the state for whose benefit it was drawn up. The Mixed Claims Commission—United States and Germany in the *Lusitania Cases* (Nov. 11, 1923) expresses this rule in the following words, "The treaty (*viz.*, the Treaty of Berlin) is based upon the resolution of the Congress of the United States accepted and adopted by Germany. *The language being that of the United States and framed for its benefit will be strictly construed against it.*"¹¹ The language of the Treaty of Versailles is the language of the Allied and Associated Powers, and on the principle thus announced it would appear that any ambiguous expression ought to be construed in favor of Germany.

Some advocates of the French and Belgian view on the contrary appear to be of opinion that, as regards the interpretation of the treaty, it is unnecessary to consider the German point of view, Germany having signed the treaty under a mental reservation. Such arguments coming from lawyers

¹⁰ *Ross v. McIntyre*, 140 U. S. 453.

¹¹ The italics are the writer's. Numerous references to well-known authorities are given in footnote 27 of the Commission's opinion in support of the rule of construction quoted in the text.

are rather surprising. A contract may be vitiated by the fact that there never was a true consensus between the parties, but the absence of such consensus does not enable one of the parties to treat the contract as binding in a manner assisting the one-sided objects of such party without considering the effect of the contract under the ordinary rules of interpretation. Either there is peace with Germany on the basis of the treaty, or there is still a state of war. If there is peace, the treaty, as it can be fairly interpreted from the point of view of the parties on both sides, can alone form the justification for any measures of enforcement.

Reference is also made to the ultimata in which Great Britain joined threatening the occupation of German territories outside of the area referred to in Article 428, and while it is admitted that the British Government had expressly declared that it had never claimed the threatened action to be in pursuance of the reparation clauses of the treaty, still it is argued that the threatened action was carried out as a sanction "for enforcing the treaty and especially its provisions relating to reparations." It is immaterial to decide, whether this is an entirely correct characterization of the attitude of the British Government, but it does not dispose of the fact that the threatened action was not in any way referred to Sec. 18 of Annex II. As stated in the British note of the 11th August,¹² "The Allies jointly decided to threaten Germany with the occupation of further territory, *just as they might have threatened her with a renewal of war*, for her failure to perform her treaty obligations, *some of which had no connection whatever with reparations.*"

It cannot be contended that the French Government might urge that if the invasion of the Ruhr was not justified by the treaty, it might still be justified as a measure taken outside of the treaty but in conformity with international law, it having been shown above that M. Poincaré in his correspondence with M. Klotz with reference to isolated action, expressly drew a distinction between isolated action under the treaty and isolated action independently of the treaty, describing the French occupation of Frankfurt as coming under the second head, and stating that the undertaking given by him in respect of the avoidance of isolated action referred exclusively to action coming under the second head.

Lastly, it is contended that the evidence is conclusive "that Germany signed the treaty, not with the intention of faithfully carrying out its provisions, but with the purpose of evading them as much as possible and that she has persisted in that design up to and beyond the date of the occupation of the Ruhr," and this statement is used as an argument for the construction of the treaty in a sense unfavorable to Germany.¹³

As pointed out above, there is no legal justification for such a contention.

¹² Correspondence with the Allied Governments (Miscellaneous No. 5), Command 1943, on p. 56.

¹³ Comment by Mr. Finch, *ibid.*, p. 733.

If one of the parties to a contract fails to carry out his obligations thereunder, the other party is entitled to exercise all rights which the breach of contract confers upon him, but the other party is not, by reason of such breach of contract, entitled to give a construction to the contract other than that of which the contract would have been capable if no breach had occurred. I do not, however, think that on an impartial consideration of the evidence, even if the entirely one-sided evidence sometimes quoted be alone regarded, it could be held that "Germany signed the treaty not with the intention of faithfully carrying out its provisions but with the purpose of evading them as much as possible." The expression "Germany" is ambiguous, but I assume that it is intended to describe the German Government. It is a well-known fact that there have been many changes of government since the conclusion of peace, and also that there have been internal troubles and difficulties, which have made the performance of the duties of government extremely difficult. It may be admitted that some governments, for the time being in power in Germany, have been less anxious to perform the obligations imposed by the Treaty of Peace than others, and that others have not been sufficiently skilful and energetic to cope with the difficulties of the financial situation. These failings have from time to time given rise to complaints, but none of these complaints go so far as to accuse Germany of having signed the treaty with the deliberate intention of evading its provisions as much as possible. Moreover, an accusation by one of the parties to a contract against the other party is not in itself evidence of its justice. The speech of the prosecuting counsel cannot be quoted as evidence of the prisoner's guilt. Mr. Lloyd George, who is referred to as one of the chief accusers, as is well known, does not interpret the treaty in the sense given to it by advocates of the French view. On the critical occasion the British representative on the Reparation Commission, as mentioned above, voted against the finding as to Germany's default. Neither his impartiality, nor his competence, nor the desire and need of the country that he represents to obtain reparation to the utmost extent of Germany's capacity, is in doubt. The other members of the commission took a different view, which prevailed, and Germany must, therefore, submit to such consequences as the Treaty of Peace imposes according to its proper interpretation, but it is an obvious fallacy to conclude that that interpretation itself must take into account the fact that there was voluntary default and that accordingly every doubtful point must be decided against Germany. I have already referred to the maxim that a treaty must be interpreted so as to give effect to the object designed, and expressed my concurrence in the view that one of the objects of the Allied and Associated Powers was to secure adequate reparations, but the argument now under discussion, even from the one-sided point of view of the parties opposed to Germany, is based on the assumption that the military occupation of the Ruhr valley was the only effective way of securing the payment of reparations. The justifica-

tion of this assumption has never been proved and the actual experience of the Ruhr occupation, far from supporting it, seems to point the other way.

I sum up the main points of my argument as follows: (1) Paragraph 18 cannot be interpreted as meaning that whenever the Reparation Commission declares Germany to be in voluntary default each of the interested Powers may take such isolated action as it may think fit, as this interpretation if acted on could only lead to confusion and to the defeat of the objects aimed at.

(2) The measures allowed by paragraph 18 cannot be construed so as to include military measures. This opinion is not based on a mechanical application of the English *ejusdem generis* rule, but on the rule of construction recognized in all countries as to the necessity of interpreting a document as a whole and of disregarding the literal interpretation of words when such interpretation is in conflict with the effect of such document as a whole.

(3) The alleged fact that Germany has deliberately committed breaches of the treaty cannot in any way affect the construction of the treaty, but can only give rise to such remedies as the treaty, construed independently of that fact, renders applicable.

All international jurists ought to stand up for the sacredness of international engagements, not merely where the interests of their own countries are concerned, but no less so where their own country or an allied or friendly country attempts to disregard this rule, and in considering the question, the benefit of the doubt should be given to the country opposed to one's own or to an allied or friendly country. In the present instance many impartial jurists hold that there is no doubt as to the illegality of the occupation of the Ruhr valley. One of these, the distinguished man who recently was the unofficial delegate of the United States to the Reparation Commission, states his views in a speech reported in the *Boston Sunday Globe*, in its issue of the 23rd December, 1923, from which I quote the following extract as expressing the views held by such jurists (including myself):

Entirely apart from the question of its success or failure, I regret the Ruhr occupation, because I believe it to be a breach of the treaty with Germany, not merely a technical breach, but a breach of the true spirit and intent of the treaty. I regret it because I regard it as elementary that we who fought Germany and raised our voices in denunciation of the crime of Alsace-Lorraine, and the violation of the neutrality of Belgium, and the sinking of the *Lusitania*, ought not to adopt methods which resemble those we denounce.

THE DAWES REPORT ON GERMAN REPARATION PAYMENTS

BY GEORGE A. FINCH

Managing Editor

The completion and transmission to the Reparation Commission on April 9th last of the report of the expert committees appointed by it to "consider the means of balancing the budget and the measures to be taken to stabilize the currency" of Germany and to "consider the means of estimating the amount of German exported capital and of bringing it back to Germany" mark a further step in the efforts of the Allied Governments to give practical effect to the reparation clauses imposed upon Germany by the Treaty of Peace signed at Versailles on June 28, 1919.

The report of the first committee has attracted especial interest in the United States because the American members, although not representatives of the Government of the United States, accepted the appointments from the Reparation Commission with the expressed approval of the State Department.¹ Interest in the report has further been increased by the recent action of the Republican National Convention which nominated General Dawes, the chairman of the first committee, for the office of Vice-President of the United States on the Republican ticket with President Coolidge. A summary of the reports with a brief setting of facts showing their relation to the general subject may, therefore, be useful.

The events directly leading up to these reports may be considered as having started on November 14, 1922, when the German Government, in anticipation of the expiration of the arrangements for the payment of reparations during the year 1922,² requested the Reparation Commission to fix Germany's liabilities at an amount which could be defrayed from the budget surplus and to grant her a moratorium for three or four years.

An Inter-Allied conference was held at London in December, 1922, and at Paris in January, 1923, for the purpose of considering this request. At that conference the British Government proposed that Germany's obligations under the treaty be fixed at substantially 50,000,000,000 gold marks, with a moratorium for four years (apart from certain deliveries in kind), on condition that Germany undertake to stabilize the mark and restore budget equilibrium within a specified time. The British Government further proposed that a Foreign Finance Council should be set up in Berlin consist-

¹ See press notice of the State Department, Dec. 12, 1923.

² See the decision of the Reparation Commission of March 21, 1922, on the subject of the payments to be made by Germany in 1922, and its modification on Aug. 31, 1922, printed in Supplements to this JOURNAL, Vol. 16, 1922, p. 238, and Vol. 17, 1923, p. 40.

ing of persons appointed by Great Britain, France, Belgium, Italy, the United States and a neutral European, with the German Finance Minister as chairman *ex officio*. The council was to be given jurisdiction over currency legislation, the budget, fiscal legislation and public expenditure, general treasury administration, financial prohibitions, control of foreign remittances, etc., and the plan provided that "If the Reparation Commission is retained at all it should be as a purely judicial body." In the event of Germany failing to discharge her revised obligations, the British plan provided that she should submit "to any measures which the Allied Powers, upon a report of such failure from the supervising authority, may unanimously decide to be necessary, including forceful seizure of German revenues and assets and military occupation of German territories outside the existing zone of occupation."³

France declined to accept any reduction of the payments which Germany owes under the schedule of payments fixed by the Reparation Commission on May 5, 1921, pursuant to the reparation clauses of the treaty of peace; she insisted upon a reorganization of the German finances, with the approval of the Reparation Commission, which should include the stabilization of the currency, restoration of budget equilibrium, stoppage of the discount of treasury bills by the Reichsbank, and the strengthening of measures designed to prevent the flight of capital abroad. The execution of this program was to be under the supervision of the Guarantees Committee, the seat of which was to be transferred to Berlin. France was unwilling to consider a moratorium of more than two years and proposed the immediate seizure of pledges which would yield an annual total of 1,000,000,000 gold marks during the moratorium period. The pledges proposed to be seized were the control of the coal output of the Ruhr by an Inter-Allied mission to be sent to Essen, the reservation of the right to realize additional quotas of timber from the state and communal forests in occupied territory, requisitions of raw material, nitrogen, etc., in the occupied territories or in the Ruhr, a levy on foreign securities on the basis of German exports coming from occupied territories and from the Ruhr basin, and the seizure of the customs and the coal tax in the territories actually occupied and in the Ruhr. The French memorandum stated that "the pledges contemplated could be seized by the Allies acting in common by merely utilizing the methods of economic control without military intervention." As penalties for the refusal of the German Government to execute this program the French memorandum provided for the military occupation of the Ruhr basin and the establishment of a customs barrier on the east of all the occupied territories.⁴

The Inter-Allied conference at Paris lasted until January 4, when it broke up without an agreement between the British and French Premiers. At the

³ For text of the plan see British blue book, Inter-Allied Conferences on Reparations and Inter-Allied Debts, Misc. No. 3, 1923, pp. 112-119.

⁴ For the text of the French plan, see Misc. No. 3, 1923, pp. 101-108.

adjournment of the conference Mr. Bonar Law read a declaration which stated his view of the failure of the conference as follows:

His Majesty's Government, after giving the most earnest consideration to the French proposals, are definitely of opinion that these proposals, if carried into effect, will not only fail in attaining the desired results, but are likely to have a grave and even disastrous effect upon the economic situation in Europe, and, in these circumstances, they cannot take part in, or accept responsibility for, them.⁵

M. Poincaré read a statement giving his view as follows:

The Government of the Republic for their part have examined very attentively and carefully the British proposals, and the longer they have studied them, the more have they felt obliged to recognize that the proposals would involve, together with a considerable reduction of the debt owing to France, the overthrow of the Treaty of Versailles, and that it is impossible for them to accept such a solution.⁶

A week later French and Belgian troops proceeded to the military occupation of the Ruhr Valley, after Germany had been declared by the Reparation Commission to be in voluntary default on timber and coal deliveries. On January 13, 1923, the German Government notified the Reparation Commission that reparation deliveries would be discontinued to the Powers taking part in the Ruhr occupation,⁷ which she declared to be in violation of the treaty of peace.⁸ Thereupon, the Reparation Commission declared, on January 26th, that the German notification of the 13th cancelled the German request of November 14, 1922, for a moratorium, that the schedule of payments of May 5, 1921, came into operation as from January 1, 1923, and that consequently Germany was in general default in the performance of her obligations toward France and Belgium.⁹ Deliveries to the non-occupying Powers were later discontinued pursuant to the German notification of August 11, 1923.¹⁰

The occupation of the Ruhr Valley by the armed forces of France and Belgium was followed by measures taken by the German Government to impede this policy and to delay the payment of reparations. The enforcement of these measures became known as "passive resistance." Their execution was financed from Berlin by means of the printing press, and the consequent inflation of the currency brought Germany's economic fabric to the point of utter collapse.¹¹

⁵ Misc. No. 3, 1923, p. 194.

⁶ *Ibid.*

⁷ *New York Times*, Jan. 15, 1923, p. 1.

⁸ For the subsequent discussions between the Allied Governments concerning the legality of the occupation of the Ruhr, see the editorial by the writer in this JOURNAL for October, 1923, Vol. 17, pp. 724-733.

⁹ Text of the decision of the Reparation Commission in *New York Times*, Jan. 27, 1923, p. 1.

¹⁰ Text of note to Reparation Commission, *London Times*, Aug. 14, 1923, p. 8.

¹¹ By the middle of September, 1923, Berlin was supplying the Ruhr population with paper

During the spring of 1923, the German Government submitted several proposals for the settlement of the reparation question. The main points of the last one, contained in the German note of June 7, 1923, were:

1. A proposal to submit to an impartial international tribunal the question of Germany's capacity to pay, coupled with an undertaking to furnish such a body with all possible information and assistance in conducting the investigation and to accept its decision as regards both the amount and the mode of payment.

2. The assignment of the following specific guarantees as securities for payment:

- (a) A first mortgage of 10 milliard gold marks, carrying 5% interest, upon the German railway system, which Germany offered to detach from the other state property and transform into a separate fund.

- (b) A first mortgage of 10 milliard gold marks, carrying 5% interest, upon the entire business, industry, banking, trade, traffic and agriculture of the country.

- (c) As security for the annual payments, the German Government agreed to pledge the customs duties on luxuries, the excise duties on tobacco, beer, wine and sugar, and the receipts of the spirits monopoly.

3. The summoning of a conference between German and Allied representatives in order to work out a detailed scheme.¹²

The British Government was of the opinion that these proposals marked a sufficient advance in the German offers of settlement to justify careful consideration, and accordingly suggested that the Allies accept the proposal for an impartial international tribunal so far as it could be carried out within the frame-work of the Treaty of Versailles and with results not inconsistent with the treaty stipulations; that a careful examination of the stabilization of the mark and the balancing of the German budget be an inseparable feature of the inquiry into the guarantees offered by Germany, and that such guarantees must include provision for some form of international control of German financial administration.¹³

But France and Belgium consistently declined all offers of new proposals from Germany until the passive resistance in the Ruhr had ceased.

After eight months of resistance to the efforts of the occupying forces to collect or induce the payment of reparations, the German Government was brought to the point of economic exhaustion where it found it necessary to relinquish the struggle, and on September 26, 1923, President Ebert called upon the population to give up "passive resistance," and the government marks amounting to a weekly total of 3,500,000,000,000,000. (See proclamation of President Ebert of Sept. 26, 1923, printed in the *New York Times* of Sept. 27, 1923, p. 2.)

¹² For the text of the German proposal of June 7, 1923, see British white paper, Correspondence with the Allied Governments respecting Reparation Payments by Germany, Misc. No. 5 (1923), pp. 2-4.

¹³ For the identic reply to the German Government proposed by the British Government, see Misc. No. 5, 1923, pp. 22-25.

subsequently annulled the ordinances and instructions which had been issued to encourage the resistance.¹⁴

In due course of events, and after an interchange of diplomatic notes between Great Britain and the United States, on the one hand, and Great Britain and France, on the other, in which the United States renewed the offer contained in Secretary Hughes' address of December 29, 1922, "to take part in an economic conference in which all the European Allies chiefly concerned in German reparations participate, for the purpose of considering the questions of the capacity of Germany to make reparation payments and an appropriate financial plan for securing such payments,"¹⁵ the German Government informed the Reparation Commission on October 24, 1923, that it was prepared to resume the deliveries provided by the Treaty of Versailles, but that the economic situation in Germany deprived the Government of the possibility of raising the funds requisite to enable it to pay for the deliveries stipulated in the treaty. The Reparation Commission was therefore requested by the German Government to "enter upon an examination of the resources and capacity of Germany in pursuance of Article 234 of the Treaty of Versailles, as well as to let representatives of the German Government have an opportunity of stating with full particulars the actual status of the resources and capacity of Germany."¹⁶ The Reparation Commission on November 30, 1923, voted the following decision:

With a view to examining, in conformity with the provisions of Article 234 of the Treaty of Versailles, the resources and also the capacity of payment of Germany, and after having given to the representatives of that country an equitable opportunity of being heard, the Reparation Commission decides to constitute two committees of experts belonging to the Allied and Associated countries. The one is to be charged with the inquiry into the means of balancing the budget and the measures to be taken to stabilize the currency, the other is to consider the means of estimating the value of capital which has escaped from Germany and of bringing about its return.¹⁷

As members of the first committee, the Reparation Commission appointed Charles G. Dawes, Chairman, and Owen D. Young, of the United States, Robert M. Kindersley and J. C. Stamp, of Great Britain, J. Parmentier and Edgard Allix, of France, Alberto Pirelli and Federico Flora, of Italy, and E. Franquini and Maurice Houtart, of Belgium. The committee was organized on January 14, 1924, and divided into two sub-committees, one on

¹⁴ Text of proclamation in *New York Times*, Sept. 27, 1923, p. 2.

¹⁵ For the British and American exchange of notes of October 13-15, 1922, see World Peace Foundation pamphlet, Vol. VI, No. 5, entitled "Reparation—Part V—The Dawes Report," pp. 338-342. See, also, the communiqué of the French Foreign Office, Oct. 28, 1923, in reply to the proposal of the British Government for the creation of a committee of experts, *ibid.*, pp. 342-344.

¹⁶ Text of note to Reparation Commission, *New York Times*, Oct. 25, 1923, p. 2.

¹⁷ *London Times*, Dec. 1, 1923, p. 10.

the stabilization of the currency and the other on the balancing of the budget. The former held 81 meetings and the latter 63, while the full committee met 54 times. The English version of the report covers 57 printed pages of a Blue Book,¹⁸ and is accompanied by nine annexes of documents containing details which occupy 60 additional pages.

As members of the second committee the Reparation Commission appointed Reginald McKenna, of Great Britain, Chairman, Henry M. Robinson, of the United States, André Laurent-Atthalin, of France, Mario Alberti, of Italy, and Albert-Edouard Janssen, of Belgium. This committee convened at Paris on January 21, 1924, and held 38 meetings in Paris and Berlin. The report of the committee states: "We have examined numerous witnesses and have availed ourselves of the services of trained economists, technical advisers and expert accountants. We have also studied the published works on the subject by well-known economists, and each member of the committee has furnished reports on particular problems."¹⁹

On the first part of its inquiry, the committee "after a close examination of all the factors which make up the total sum, are of opinion that German capital abroad of every kind, including capital of varying degrees of liquidity and capital invested in participations in foreign companies and firms, and after taking into account all credit and debit items was at the end of the year 1923 not less than 5.7 milliard gold marks and not more than 7.8 milliard gold marks, and we think that the middle figure of 6 $\frac{3}{4}$ milliard gold marks is the approximate total" (p. 128). The committee considered that the foreign currency in Germany must not be overlooked as a "German holding in the most liquid form for conversion into foreign assets." The total of this currency was estimated at one milliard two hundred million gold marks. The committee further reported that the property in Germany held by foreigners from which Germany receives an annual yield should not be left out of account in taking a broad view of German financial capacity, and the committee estimated that the real estate and securities owned in Germany by foreigners represent a value of from one milliard to one and one-half milliard gold marks (pp. 128-9).

As to the second part of its inquiry, the McKenna committee reported that the flight of capital arose principally from the failure of the Government to bring its budget into proper relation, from the raising of large loans and the direct issue of paper money; the action of speculators and investors who sold their marks against the currency of other countries, and the retention abroad by exporters of all that was possible of the proceeds of their sales. In particular, the committee reported, "the flight of capital was accentuated by the attitude of the people of Germany towards payments to her war creditors, and was marked by new and ingenious devices and schemes for

¹⁸ Reports of the Expert Committees appointed by the Reparation Commission. Cmd. 2105.

¹⁹ British blue book, Cmd. 2105. p. 126.

evading restrictive legislation and for cloaking the real ownership of foreign balances" (p. 129). The committee reported that "neither legal enactment nor severe penalties resulted in disclosure of assets abroad or hampered the flight of capital" and that the only way to prevent the exodus of capital from Germany and to encourage its return is to eradicate the cause of the outward movement. "Inflation must be permanently stopped" (p. 129). The committee suggested that during the period of transition in Germany "an amnesty should be granted for a limited time from the penalties imposed by existing enactments and that special terms be offered for subscriptions to Government loans made in foreign currencies" (p. 130).

Taking now the report of the first committee, Chairman Dawes in his letter transmitting the report to the Reparation Commission, states that:

In the preparation of this report, the committee has carefully and laboriously covered the broad field of investigation. It has had the constant coöperation of able staffs of experts, gathering information, digesting it and presenting it. It conducted, on the ground, an examination of the officials of the German Government and representatives of its labor, agriculture, and industry. It received from the German Government and its representatives voluminous and satisfactory answers in response to its written inquiries. In connection with various features of its report, both for gathering information and for advice, it has called to its assistance outside experts of international reputation. The published reports and statements of economists of world-wide standing have been in its hands. It has had the benefit of the accumulated information heretofore gathered by your Commission (p. 3).

The report states that the committee approached its task "as business men anxious to obtain effective results. . . . It has not seemed necessary to establish the causes, nor the responsibility for those causes, which have operated to produce the present state of German finances and currency, except in so far as a recognition of their character is required for the prescription of remedies." The problem presented was the practical means of recovering the debt of Germany to the Allies under the Treaty of Versailles, not "the imposition of penalties and the guarantees which we propose are economic and not political. . . . If political guarantees and penalties intended to ensure the execution of the plan proposed are considered desirable, they fall outside the Committee's jurisdiction" (pp. 12-13).

As an essential agency for creating in Germany a unified and stable currency the committee proposes the establishment of a new bank of issue, the principal functions of which will be the exclusive right to issue paper money for a period of fifty years and to act as the depository and fiscal agent of the German Government. "Treaty funds collected in Germany are all to be deposited in the new bank to the credit of a special account and are only to be withdrawable by the creditor nations under conditions and safeguards which will adequately protect the German exchange market and the interest of the creditor nations and the German economy." The bank will be di-

rected by a German president and managing board but, in order to safeguard the observance of its statutes, the bank will have a further governing body known as a General Board which will consist of seven Germans and seven foreigners, one each of British, French, Italian, Belgian, American, Dutch and Swiss nationality. One of the foreign members will be known as the "Commissioner" who "will be responsible for seeing that there is no infringement of the provisions relative to the issuance of notes and the maintenance of the bank's reserves. Decisions of the General Board will require a majority vote of ten of the fourteen members unless both the president and the commissioner are included in the majority, in which case a simple majority will be sufficient." The new bank will have a capital of 400,000,000 gold marks, part to be subscribed in Germany and part abroad (pp. 15-16). The total amount of the foreign loan proposed is 800,000,000 gold marks, which will be deposited in the new bank as a contribution to its gold reserves and for financing essential deliveries in kind during the preliminary period of economic rehabilitation (p. 38).

As normal resources from which Germany should make payments to meet her treaty obligations, the committee recommends the following sources: (a) from her ordinary budget; (b) from railway bonds and transport tax; (c) from industrial debentures (p. 24).

The committee repudiates the view that "Germany's full domestic demands constitute a first charge on her resources and that what is available for her treaty obligations is merely the surplus revenue that she may be willing to realize" (p. 18). The committee states that "It is not open to dispute, as a simple principle of justice, and it is contemplated by the treaty that the German people should be placed under a burden of taxation at least as heavy as that borne by the people of the Allied countries." It adds: "No single person in Germany, whether speaking as an individual or representing any section of the nation, has failed to accept that principle when it has been squarely put to him" (p. 20). At the same time, the committee reports, "if a prior obligation for reparation that is fixed for Germany to pay, together with an irreducible minimum for her own domestic expenditure make up in a given year a sum beyond her taxable capacity, then budget instability at once ensues and currency stability is also probably involved. In that event, an adjustment of the treaty obligations of the year is obviously the only course possible" (p. 18).

The committee fully recognizes "both the necessity and the justice of maintaining the principle embodied in the treaty that Germany's payments should increase with what may prove to be the increase in her future capacity," and that "an estimate now made once for all might well underestimate this." To meet this situation, the committee provides for a fixed annual payment and a variable addition thereto dependent upon a composite index figure designed to reflect Germany's increasing capacity (p. 19). The index is to be ascertained from the following six sets of representative

statistics: railway traffic, population, foreign trade, consumption of tobacco, etc., budget expenditure and consumption of coal. An average of years (chiefly 1926, 1927, 1928, and 1929) is to be taken as the base, and the average of these six percentages will be taken as indicating the proportionate increase to be added to the treaty sums demanded in a given future year. The committee believes that:

Under this system Germany will retain her incentive to develop, as she retains the major part of the advantage of any increase in prosperity, while the Allies obtain a reasonable share in this increase and avoid the risk of losing through a premature estimate of future capacity.

At the same time, the adoption of a method involving not discretionary but automatic application, gives the necessary assurance from the commencement both to Germany and the world that treaty demands will not, in the period to which the settlement relates, be again the subject of negotiation and dispute (p. 21).

The second source recommended by the committee for deriving treaty payments is the issuance of 11,000,000,000 gold marks first mortgage bonds on the German railways, bearing 5% interest and 1% sinking fund per annum. The bonds are to be received and administered by a trustee appointed by the Reparation Commission. The committee reports that, while it is true that the German railway systems have passed through a period of great difficulty since the war from causes which were largely beyond their control, they have been enormously overstaffed and extravagant capital expenditures have been made. The situation has been improved by the separation of the railways from the ordinary administration and assimilation to a business concern, by the slackening of capital construction, and the raising of fares to a point where some profit is provided, but the committee regards these measures as insufficient. Railway experts consulted by the committee estimate the capital value of the railways on a conservative basis at 26,000,000,000 gold marks, unincumbered with old debts which were extinguished by the depreciation of the mark, and the committee is convinced that "under proper management, under unified control, and with a proper tariff policy, the railways can without difficulty earn a fair return upon their present capital value." The committee concludes, however, that "it would be useless to expect anything approaching the full measure of improvement which is possible, so long as the railways remain in the control of the government." It consequently recommends the conversion of the railways into a joint stock company to be managed by a board of eighteen directors, nine to be chosen by the German Government and private holders of preference shares, and nine to be named by the trustee of the bonds, five of whom may be German. The Chairman of the Board and the General Manager will be German, and the Railway Commissioner will represent the interests of the bond-holders. In addition to the 11,000,000,000 bonds issued for reparation account, the new railway company is to have a capital of

2,000,000,000 of preference shares and 13,000,000,000 of common stock. One and one-half milliards of the preference shares are to be set aside in the treasury of the company for sale to private persons, and the proceeds of the sale of the other 500,000,000 of preference shares and all of the common shares are to go to the German Government (pp. 29-30).

Finally, the committee recommends a contribution to reparation payments from German industry in a sum of not less than 5,000,000,000 gold marks to be represented by first mortgage bonds bearing 5% interest and 1% sinking fund. These bonds will be received and administered by a trustee appointed by the Reparation Commission. In justification of this recommendation the committee reports:

This amount of bonds is less than the total debt of industrial undertakings in Germany before the war. Such indebtedness has for the most part been discharged by nominal payments in depreciated currency, or practically extinguished. In addition the industrial concerns have profited in many ways through the depreciated currency, such as the long delayed payment of taxes, by subsidies granted and advances made by the German Government, and by depreciation of emergency money which they have issued. On the other hand it is incontestably true that there have also in many instances resulted losses, through the depreciation of currency, from the sale of output at fixed prices and in other ways.

It is unnecessary for the committee to make an estimate of the total amount of such profits and losses; it is sufficient to say that the committee is satisfied that a burden of mortgage debt of the amount of 5,000,000,000 gold marks on the industries of Germany, fairly apportioned, bearing a moderate rate of interest and payable on long maturity, does not create a burden greater than that which would have existed had there been no depreciation of currency.

In fact the fairness of such a proposal has been recognized by the German Government itself in a proposal submitted on 7th June, 1923, to all the Allied and Associated Governments.

This proposal was later confirmed by persons in high authority in the subsequent and present German Governments.

The offer referred to was of ten milliard gold marks, covering business, industry, banking, trade, traffic and agriculture. The request of the committee is for five milliards only and it suggests the exemption of agriculture from the obligations of the mortgage (pp. 31-32).

The committee finds that Germany must be given a certain period within which to recover her economic equilibrium, and makes provision for minimum reparation payments for a two-year "budget moratorium period," and a second two-year "transition period," the payments not becoming standard until the fifth year. The following summary is provided by the committee of the treaty payments contemplated in these respective years (p. 32):

	Million gold marks
BUDGET MORATORIUM PERIOD	
<i>First Year:</i> from foreign loan and part interest (200 millions) on railway bonds:	
Total of.....	1,000
<i>Second year:</i> from interest on railway bonds (including 130 mil- lions balance from first year) and interest on industrial debentures and budget contribution, including sale of rail- way shares;	
Total of.....	1,220
TRANSITION PERIOD	
<i>Third year:</i> from interest on railway bonds and industrial de- bentures, from transport tax and from budget;	
Total of.....	1,200
subject to contingent addition or reduction not exceeding 250 gold marks	
<i>Fourth year:</i> from interest on railway bonds and industrial de- bentures, from transport tax and from budget;	
Total of.....	1,750
subject to contingent addition or reduction not exceeding 250 million gold marks.	
STANDARD YEAR	
<i>Fifth year:</i> from interest on railway bonds and industrial de- bentures, from transport tax and from budget:	
Total of.....	2,500

The report states clearly that the above payments "comprise all amounts for which Germany may be liable to the Allied and Associated Powers for the costs arising out of the war, including reparation, restitution, all costs of all armies of occupation, clearing house operations . . . commissions of control and supervision, etc." (p. 33).

The committee considered it to be outside its competence "to establish a limit of years or of amount for the working of the index, nor is it within their competence to fix the number of annuities which Germany will have to pay, as this would practically mean the fixation of a new German capital debt" (p. 20). A communiqué of the French Foreign Office, dated October 28, 1923, two days before the appointment of the Dawes committee, states that "France will not accept that a committee of experts make any changes in the amount of the debt as fixed May 1, 1921, and will give its consent to no reduction whatsoever in the amount of the obligations of Germany as determined by the Reparation Commission in May, 1921."²⁰

Concerning the economic potentialities of Germany for carrying out the plan, the committee makes the following observations:

The task would be hopeless if the present situation of Germany accurately reflected her potential capacity; the proceeds from Germany's national production could not in that case enable her both to meet the national needs and to ensure the payment of her foreign debts.

²⁰ Text in London *Times*, Oct. 29, 1923, p. 12.

But Germany's growing and industrious population; her great technical skill; the wealth of her material resources; the development of her agriculture on progressive lines; her eminence in industrial science; all these factors enable us to be hopeful with regard to her future production.

Further, ever since 1919 the country has been improving its plant and equipment; the experts specially appointed to examine the railways have shown in their report that expense has not been spared in improving the German railway system; telephone and telegraph communications have been assured with the help of the most modern appliances; harbors and canals have likewise been developed; lastly, the industrialists have been enabled further to increase an entirely modern plant which is now adapted in many industries to produce a greater output than before the war.

Germany is therefore well equipped with resources; she possesses the means for exploiting them on a large scale; when the present credit shortage has been overcome, she will be able to resume a favored position in the activity of the world where normal conditions of exchange are gradually being restored (pp. 14-15).

As to the financial burden which will devolve upon the individual German should the plan be adopted, the committee "is confident that it lies within the power of the German people to respond to the burdens imposed by the plan, without impairing a standard of living comparable to that of the Allied countries and their neighbors in Europe, who are likewise subject to heavy burdens, largely resulting from the catastrophe of the war" (p. 42).

The plan provides that the definite act of the German Government in meeting its financial obligations will be the payment of all reparation moneys, including interest and sinking fund on railways and industrial debentures, transport tax and budget contributions, in gold marks or their equivalent in German currency, into the bank of issue to the credit of an "Agent for Reparation Payments" to be appointed by the Reparation Commission (p. 34).

The committee points out that "There has been a tendency in the past to confuse two distinct though related questions, *i.e.*, first, the amount of revenue which Germany can raise available for reparation account, and, second, the amount which can be transferred to foreign countries. The funds raised and transferred to the Allies on reparation account cannot, in the long run, exceed the sums which the balance of payments makes it possible to transfer, without currency and budget instability ensuing. But it is quite obvious that the amount of budget surplus which can be raised by taxation is not limited by the entirely distinct question of the conditions of external transfer" (p. 22). To safeguard the stability of the budget and the currency, the committee accordingly provides that the use and withdrawal of the moneys deposited in the bank of issue for the account of reparations will be controlled by a committee consisting of the Agent for Reparation Payments and five persons skilled in matters relating to foreign exchange and finance, representing five of the Allied and Associated Powers.

"This committee will regulate the execution of the programme for deliveries in kind and the payments under the 'Reparation Recovery Act,'" and "also control the transfer of cash to the Allies by the purchase of foreign exchange" (p. 35).

The committee emphasizes that its whole report is based on the hypothesis that the fiscal and economic unity of Germany will be restored and, while it regards questions of military occupation as not coming within its competence, the committee assumes that the existing measures, in so far as they hamper German economic activity will be withdrawn or sufficiently modified so soon as Germany has put the plan into execution. "If the economic system now in operation in occupied territory be modified," the committee "is unanimously of the opinion that a settlement of reparation must be reinforced by adequate and productive securities" (pp. 13-14). For this purpose the committee suggests that the German revenues from customs, alcohol, tobacco, beer and sugar, be assigned to Germany's treaty creditors as collateral for the payment of the sums charged annually on the German budget (p. 37). The total yield of the assigned revenues will be paid into the account of the Agent for Reparation Payments through the receiving offices immediately on receipt. The amounts required to meet the reparation charges in the budget will be retained and the balances periodically released to the German Government (p. 62). Any defaults in payments for the service of the railway bonds or industrial debentures may be deducted from the assigned revenues (pp. 106 and 109). These revenues will be supervised by a commissioner to be appointed by the Reparation Commission who may be selected from a neutral country, and who will be assisted by an advisory committee on which each of the interested Allied countries will be represented. The general functions of the commissioner will be to ascertain that all assigned revenues are properly obtained from the public and flow through the control administration (pp. 62-63).

If the economic precautions against default are distasteful to Germany, we have the assurance of General Dawes in his covering letter to the Reparation Commission that:

The thorough effectiveness of these safeguards should not embarrass the normal economic functioning of Germany, and is of fundamental importance to her creditors and to Germany.

Great care has been taken in fixing conditions of supervision over Germany's internal organization so as to impose the minimum of interference consistent with proper protection. This general plan, fair and reasonable in its nature, if accepted, leads to an ultimate and lasting peace. The rejection of these proposals by the German Government means the deliberate choice of a continuance of economic demoralization, eventually involving her people in hopeless misery (p. 3).

The foregoing summary of such an extensive and complicated subject naturally omits many detailed provisions necessary to complete and round out the plan in its entirety; but it will give a general idea of the solution of the

reparations problem which General Dawes said in his covering letter to the Reparation Commission "if accepted, will lead to an ultimate and lasting peace."

The plan is not considered to be in the nature of a political compromise, for General Dawes states in his letter to the Reparation Commission: "In speaking of my colleagues and as bearing upon the value of this report, I feel that I should make it known to your Commission and to the world, that their governments have in no case limited their complete independence of judgment and action, either before or after their appointment by you. Limited only by the powers granted by your Commission, each has performed his arduous and responsible work as a free agent. These men, searching for truth and advice thereon, were answerable only to conscience" (p. 4).

In this respect the plan corresponds to the suggestion made by Secretary of State Hughes in his speech at New Haven, Connecticut, on December 29, 1922, that "the first condition of a satisfactory settlement is that the question [of German reparations] should be taken out of politics. . . . If statesmen cannot agree . . . why should they not invite men of the highest authority in finance in their respective countries—men of such prestige, experience and honor that their agreement upon the amount to be paid, and upon a financial plan for working out the payments, would be accepted throughout the world as the most authoritative expression obtainable? Governments need not bind themselves in advance to accept the recommendations, but they can at least make possible such an inquiry with their approval and free the men who may represent their country in such a commission from any responsibility to foreign offices and from any duty to obey political instructions. In other words, they may invite an answer to this difficult and pressing question from men of such standing and in such circumstances of freedom and will insure a reply prompted only by knowledge and conscience."²¹

On April 11, 1924, the Reparation Commission decided that the experts' reports "offer a practical basis for the rapid solution of the reparations problem," but reserved its approval and action until Germany declared its willingness to collaborate in the execution of the experts' plans. To this end it ordered a hearing of the German delegates on April 17th.²² On April 16th the German Government sent to the Reparation Commission a note declaring its willingness to collaborate in the execution of the experts' plans.²³

On April 17th the Reparation Commission unanimously decided "to approve within the limits of its powers the conclusions set forth in these reports and to adopt the methods therein recommended." On the same day the Commission officially transmitted the reports to the governments

²¹ *Current History*, Feb. 1923, pp. 844-845.

²² Text of communiqué in the *London Times*, April 12, 1924, p. 12.

²³ Text in the *London Times*, April 17, 1924.

concerned recommending the conclusions coming within their jurisdiction "in order that the plans proposed might be brought into full operation without delay." At the same time the Commission asked the German Government to submit the drafts of laws, decrees and other measures intended to insure the complete execution of the plans and to notify the Commission of the names of the German members of the various committees provided in the Dawes report.²⁴

Replies to the Reparation Commission were received from the Belgian, British and Italian Governments under date of April 24th, and from the French Government under date of April 25, 1924.²⁵ The Belgian and Italian Governments expressed their willingness to accept the experts' conclusions in their entirety.

The British Government replied that, since the plan does not involve any reduction in the total of the German reparation debt and as any necessary modifications of the schedule of payments of May, 1921, are within the competence of the Reparation Commission, specific authority from the governments represented on the Commission is not required on these points under Article 234 of the Treaty of Versailles. The recommendations of the experts coming within the jurisdiction of the Allied Governments were stated in the British reply as follows: "(a) restoration of the economic and fiscal authority of the German Government over the whole of the German territories; (b) the steps necessary to give binding effect to new guarantees and controls so far as these may not be clearly covered by the existing provisions of the Treaty of Versailles; (c) the inclusion of all the financial liabilities of Germany under the peace treaty in a single annuity." Concerning these points and upon any other recommendations of the experts which the Reparation Commission may hold will require the endorsement or action of the Allied Governments, the British Government expressed its willingness to do anything in its power to give practical effect to the recommendations of the committee.

The French reply expressed satisfaction with the report of the experts which, it said, would enable the Reparation Commission to consider, in conformity with the provisions of Article 234 of the Treaty of Versailles, the resources and capacity of Germany and to pronounce a definite decision which will embody the conclusions contained in the reports and give them practical form. Until this has been done and the Allied Governments have ascertained whether the German Government has taken the necessary measures to carry out the Commission's decisions, they will not be able, the French reply stated, to take useful action. Regarding the recommendation

²⁴ Text of communiqué in the *New York Times*, April 18, 1924, p. 1, and of the letter of the Reparation Commission to the Allied Governments, April 17, 1924, in *L'Europe Nouvelle*, May 3, 1924, p. 582.

²⁵ French text in *L'Europe Nouvelle*, May 3, 1924, pp. 582-3. English texts in the *New York Times*, April 27, 1924, pp. 1, 3.

of the experts that the economic and financial unity of the Reich should be restored as soon as the plan is put into execution, the French reply stated that "the governments will have to consider together under what conditions the guarantees at present held by France and Belgium shall be merged into or exchanged for those which will be handed over as an undivided whole to all the Allies. These operations cannot, however, take place until Germany has effectively put the plan into execution. It is for the governments to determine by common agreement the guarantees which these operations may render necessary."

On April 28th the German Government communicated to the Reparation Commission the names of its representatives to serve on the currency commission, the railways commission, and the economic commission to be set up under the Dawes report.²⁶ A conference of Allied Premiers will meet in London on July 16th to discuss the execution of the Dawes plan. The American Government has been invited to take part in the conference, and the American Ambassador at London has been instructed by the State Department to attend "for the purpose of dealing with such matters as affect the interests of the United States, and otherwise for purposes of information."²⁷

One matter involved in the execution of the Dawes plan which very definitely affects the interests of the United States is the payment of the costs of its armies of occupation formerly in the Rhine territories. By the agreement signed at Paris on May 25, 1923, between the United States and the Allies, it was provided in substance that the amount due to the United States shall be paid in twelve annual installments out of future cash payments credited to Germany.²⁸ Another matter which may affect the interests of the United States is the payment of American claims against Germany now being adjudicated by the Mixed Claims Commission established under the Treaty of Berlin of August 10, 1922, for which German property in America in the control of the Alien Property Custodian is being held as security under the Joint Resolution of July 2, 1921, and the treaty of peace with Germany of August 25, 1921.²⁹

In making public the instructions to the American Ambassador to attend the conference of Premiers in London, the White House announcement stated that "it is the desire of the Administration that the Dawes plan should be put into effect as speedily as possible. This is the first essential step to economic recovery abroad in which this country is vitally interested."

On the whole, it seems hopeful that the universal conscience, to which

²⁶ *London Times*, April 29, 1924, p. 12.

²⁷ *Washington Post*, June 26, 1924, p. 1.

²⁸ See summary of this agreement in this JOURNAL, Vol. 17, 1923, pp. 513-517.

²⁹ These two treaties are printed in the Supplement to this JOURNAL, 1922, Vol. 16, pp. 10 and 171. The treaty of peace incorporates the pertinent provisions of the Joint Resolution of July 2, 1921.

Chairman Dawes appeals in his letter of April 9th transmitting the plan of his committee to the Reparation Commission, will agree with him that it is based "upon those principles of justice, fairness, and mutual interest, in the supremacy of which not only the creditors of Germany and Germany herself, but the world, has a vital and enduring concern."

MEMBERSHIP IN THE LEAGUE OF NATIONS

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1. *Growth of membership.* When the Covenant of the League of Nations came into force on January 10, 1920, there were twenty-three members of the League. By the expiration of the two months allowed by Article 1 for accessions to the Covenant, on March 10, 1920, the number had been increased to thirty-three. When the First Assembly met on November 15, 1920, the League had forty-two members, and when it adjourned on December 18, 1920, the number had been increased to forty-eight. The Second Assembly in 1921 admitted three more members, the Third Assembly in 1922 admitted one, and the Fourth Assembly in 1923 admitted two. So that since the Fourth Assembly, the members number fifty-four. These include all but seven of the twenty-four Powers represented at the first Hague Conference in 1899, and all but seven of the forty-five Powers represented at the second Hague Conference in 1907.¹

2. *Original and non-original members.* The original members of the League of Nations include only those states named in the Annex to the Covenant which sign and ratify the Treaty of Versailles or some other of the treaties of peace, or which, not being signatory to that treaty, accede without reservation to the Covenant.² The non-original members are the states later admitted to the League under paragraph 2 of Article 1. But there is no difference between original and non-original members, except in the fact of the history of their admission and except as conditions may be set at the time of admission. Once admitted, all members are on a basis of complete equality in their enjoyment of the privileges of membership.³

¹ The seven Powers are the Dominican Republic, Ecuador, Germany, Mexico, Russia, Turkey and the United States of America. Korea and Montenegro no longer have independent status; Korea was represented at the Hague Conference of 1899, and Montenegro was represented at the Hague Conferences of 1899 and 1907. See Fedozzi, "La Situation juridique et internationale du Montenegro," 49 *Journal du Droit international privé* (1922), pp. 549-551.

² The word "accede" was used, rather than "adhere," in order to denote the placing of the acceding state under the same conditions as the signatory states. See Satow, *Diplomatic Practice* (2 ed.), Vol. 2, p. 317. "Whereas through accession a third State becomes a party to the treaty, with all the rights and duties arising from it, through adhesion a third State becomes a party only to such parts or principles of the treaty as it has adhered to." Oppenheim, *International Law* (3 ed.), I, 685. But some of the letters of accession use one term, some the other, and some use both. Paraguay uses the term "accept."

³ See Records of Second Assembly, Plenary Meetings, p. 685.

This question has arisen in connection with a contention advanced by Salvador that

3. *Membership based on ratification of Treaty of Versailles.* Twenty-eight members of the League became such by ratifying the Treaty of Versailles. On January 10, 1920, the first procès-verbal of the deposit of ratifications was drawn up at Paris. This procès-verbal records the deposit of ratifications by the British Empire,⁴ France, Italy, Japan, Belgium, Bolivia, Brazil, Guatemala, Peru, Poland, Siam, Czecho-Slovakia, and Uruguay, all of which are named in the Annex to the Covenant. Other signatories of the Treaty of Versailles later deposited their ratifications at Paris, and at once became members of the League. Thus, the Serb-Croat-Slovene State deposited her ratification on February 10, 1920; Cuba, on March 8, 1920; Greece, on March 30, 1920; Portugal, on April 8, 1920; Haiti and Liberia, on June 30, 1920; Roumania, on September 14, 1920; Honduras and Nicaragua, on November 3, 1920; and Panama, on November 25, 1920.⁵

4. *Membership based on ratification of other peace treaties.* Though the Covenant of the League was included in the Treaty of St. Germain made by the Allies with Austria, the Treaty of Triano with Hungary, and the Treaty of Neuilly-sur-Seine with Bulgaria,⁶ the League gained but one member by reason of the ratification of these treaties. The Chinese representatives at the Peace Conference refused to sign the Treaty of Versailles, though the treaty was drawn to include China as a party and China was named in the Annex to the Covenant. But the Chinese representatives did sign the Treaty of St. Germain on September 10, 1919, and by her ratification of this treaty, deposited on July 16, 1920,⁷ China took her place as a member of the League.

5. *Membership by accession to the Covenant.* All of the states invited to accede to the Covenant promptly did so within the required time-limit of two months.⁸ The Argentine documents of accession were dated July 18 certain members of the League of Nations did not become members of the International Labor Organization by acceding to the Covenant. The rejection of this contention seems to have been accepted by Salvador.

⁴ By means of a single ratification deposited for the whole British Empire, the four Dominions signatory to the Treaty of Versailles—Canada, Australia, New Zealand, South Africa—and India also became members. See *post*, paragraph 9.

It hardly seems important to discuss the juridical effect of including the Covenant in the treaties of peace, vis-à-vis Germany, Austria, Hungary and Bulgaria. See, however, Pollock, *League of Nations* (2 ed.), p. 94.

⁵ These dates are taken from 113 Brit. & For. State Papers, 470. As to Panama, although her ratification was not deposited until Nov. 25, announcement of the ratification had previously been made by telegram. *League of Nations Official Journal* (cited herein as "Official Journal"), 1920, p. 299. This enabled Panama to be represented at the First Assembly which opened on Nov. 15, 1920.

⁶ As well as in the ill-fated Treaty of Sèvres with Turkey; but this treaty was never brought into force. The Treaty of Lausanne of July 24, 1923, between certain of the Allied Powers and Turkey, does not include the Covenant.

⁷ See 113 Brit. & For. State Papers, 464. See V. K. Wellington Koo, "China and The League of Nations," in *Les Origines et L'Oeuvre de la Société des Nations*, I, 342.

⁸ The second paragraph of Article 1 of the Covenant does not provide for the later election of any of these states which might have failed to accede within the conditions set.

and 29, 1919;⁹ that of Paraguay, October 29, 1919;¹⁰ Chile, November 4, 1919;¹¹ Persia, November 21 and 26, 1919;¹² Spain, January 10, 1920;¹³ Venezuela, January 12, 1920;¹⁴ Colombia, February 16, 1920;¹⁵ Norway, March 5, 1920;¹⁶ Denmark¹⁷ and Switzerland,¹⁸ March 8, 1920; the Netherlands¹⁹ and Sweden,²⁰ March 9, 1920; Salvador, March 10, 1920.²¹ Thus, all of the thirteen states which had been neutral in the war and which were invited to join the League accepted the invitation. And it is notable that action was taken by four of them even before the Covenant came into force, though of course their accessions did not become effective before that date.

6. *Accession without reservation.* The accession of invited states was required by the Covenant to be "without reservation". The Argentine Republic, Denmark, Netherlands, Paraguay, Persia, Salvador, and Spain expressly stated in their documents of accession that this action was taken unreservedly. Norway and Sweden made no mention of reservations. Venezuela acceded "subject to the ratification of this accession by the Congress of the United States of Venezuela."²² The Republic of Chile stated in its notification of accession that it "makes no other reservation than that of pronouncing in due course upon such amendments or modifications of the stipulations of the Covenant, as may be made by the states which have not ratified it up to the present."²³ This would seem to have been a *caveat* against possible amendments or modifications attempted by such states as the United States.

7. *The special case of Colombia.* On February 12, 1920, the Secretary-

The formal invitation to accede to the covenant was conveyed by a telegram of the President of the Peace Conference on January 12, 1920. See Munch, "Les États Neutres et Le Pacte de la Société des Nations," in *Les Origines et L'Oeuvre de la Société des Nations*, I, p. 161.

⁹ Official Journal, 1920, pp. 13-14.

¹⁰ *Ibid.*, p. 14.

¹¹ *Ibid.*, p. 15.

¹² *Ibid.*, pp. 15-16.

¹³ *Ibid.*, p. 16.

¹⁴ *Ibid.*, pp. 259-260.

¹⁵ See paragraph 7, *post*.

¹⁶ Official Journal, 1920, pp. 260-261. See Lie, "L'Entrée de la Norvège dans la Société des Nations," in *Les Origines et L'Oeuvre de la Société des Nations*, I, p. 345.

¹⁷ Official Journal, 1920, p. 261.

¹⁸ See paragraph 8, *post*.

¹⁹ Official Journal, 1920, p. 262. On the procedure followed in the Netherlands, see *Grotius Annuaire International*, 1921-22, pp. 66-96. See also Struycken, "L'Attitude des Pays-Bas envers La Société des Nations," in *Les Origines et L'Oeuvre de la Société des Nations*, I, p. 267.

²⁰ *Ibid.*, p. 262. See Trygger, "L'Entrée de la Suède dans la Société des Nations," in *Les Origines et L'Oeuvre de la Société des Nations*, I, 428.

²¹ Official Journal, 1920, p. 263.

²² The legislative ratification of accession was voted on June 25, 1920, and was approved by the provisional President on October 12, 1920. Venezuela, *Recopilacion de Leyes*, 1920, pp. 911-918.

²³ Official Journal, 1920, p. 15.

General informed the Council that the minister of Colombia had submitted to him a draft form of accession to the Covenant. "Colombia desired to accede to the Covenant, but did not wish to find herself thereby committed to a recognition of the independence of Panama, a signatory of the peace treaty. Colombia had not yet recognized the independence of Panama, and a treaty upon this question between Colombia and the United States was even now awaiting ratification."²⁴ After some discussion it was decided that the Secretary-General should be authorized to draft an acknowledgment of Colombia's proposal of accession, without expressing any opinion on the point at issue.²⁵ The legal effect of Colombia's action must have been the recognition of Panama as a member of the League of Nations, however.

8. *The special case of Switzerland.* In no country of the world was the establishment of the League of Nations taken more seriously than in Switzerland. Soon after the Covenant was promulgated, the Swiss Federal Council prepared a careful study of its provisions and this was embodied in a message²⁶ to the Federal Assembly on August 4, 1919. The Federal Assembly approved the proposal that Switzerland accede to the Covenant, after a referendum of the people and the cantons. This referendum required a certain delay,²⁷ and the date was so set that it could not be completed by March 10, 1920. The Swiss Government therefore had the problem of acceding subject to a vote of the people and cantons, as M. Ador explained to the Council of the League on February 11, 1920.²⁸ It was contended that this condition was not tantamount to a reservation, however. A more serious problem was the effect of League membership on traditional Swiss neutrality, and it was necessary that this be faced before the popular consultation. By Article 435 of the Treaty of Versailles, the signatory Powers had recognized the guarantees of 1815 "in favor of Switzerland," denominating them "international obligations for the maintenance of peace." M. Ador explained to the Council that in the view of the Swiss Government such obligations fell within Article 21 of the Covenant. He said that "the Swiss people held as an article of faith that their country should remain perpetually neutral and inviolable, and should alone be responsible for the defense of the integrity of her territory."²⁹ Replying to a question of Mr. Balfour, M.

²⁴ Procès-verbal of Second Session of the Council, 4th meeting, p. 5.

By the treaty with the United States signed April 6, 1914, but of which ratifications were not exchanged until March 1, 1922, Colombia "recognized Panama as an independent nation." 3 *Treaties and Conventions of the United States*, p. 2539. At a conference in Washington on May 8, 1924, representatives of the Governments of Colombia and Panama agreed upon the resumption of diplomatic relations between the two countries.

²⁵ Procès-verbal of the Second Session of the Council, 4th meeting, p. 5.

²⁶ *Message du Conseil Fédéral à l'Assemblée Fédérale du 4 août, 1919.* This has been translated into English by Dr. Pawley Bate, formerly a member of the Legal Section of the Secretariat.

²⁷ See Message, p. 92.

²⁸ Procès-verbal of the Second Session of the Council, 2nd meeting, p. 3.

²⁹ *Ibid.*

Ador said that Switzerland would not consider the presence of a military commission in Geneva, acting under the authority of the League, as incompatible with Swiss neutrality.

On February 12, 1920, the Council³⁰ adopted a resolution recognizing Switzerland's unique position, already recognized by Article 435 of the Treaty of Versailles, accepting "the declaration made by the Swiss Government in its message to the Federal Assembly of 4th August 1919³¹ and in its memorandum of 13th January 1920"³² whereby Switzerland recognizes the duties of solidarity imposed by membership in the League, and recognizing Switzerland's perpetual neutrality. The resolution stated that the Swiss declaration of accession to the League "can be accepted by the other members of the League as the declaration required by Article 1 for admission as an original member, provided that confirmation of this declaration by the Swiss people and cantons be effected in the shortest possible time."

The decree of accession voted by the Federal Assembly on November 21, 1919, provided that the decree should be submitted to the vote of the people and the cantons as soon as the five great Powers should have adhered to the Covenant.³³ This so-called "American clause" had not been contained in the draft submitted in the message of August 4, 1919. In February, 1920, it was still uncertain what action would be taken by the United States, and as the time limit for accession by neutral states was March 10, 1920, the Federal Council on February 17, 1920, advised the Federal Assembly to delete the "American clause" from the Federal decree.³⁴

The popular vote on the question of entering the League took place on May 16, 1920, after a spirited campaign of discussion. The accession of Switzerland was ratified by 416,870 votes against 328,719, and by 12½ cantons against 11½.³⁵

9. *Membership of the British Dominions.* The special position of the Dominion of Canada, the Commonwealth of Australia, the Union of South Africa, the Dominion of New Zealand, and India gave them special listing in the Annex to the Covenant. They were not mentioned in the enumeration of Allied and Associated Powers at the beginning of the Treaty of

³⁰ Procès-verbal of the Second Session of the Council, 4th meeting, p. 45.

³¹ *Message du Conseil fédéral à l'Assemblée fédérale du 4 août 1919*, p. 37.

³² *Message complémentaire du Conseil fédéral à l'Assemblée fédérale concernant la question de l'accession de la Suisse à la Société des Nations (du 17 février 1920)*, p. 24.

³³ "Le présent arrêté fédéral sera soumis au vote du peuple et des cantons, aussitôt que les cinq Grandes Puissances auront adhéré au Pacte." *Message Complémentaire du Conseil fédéral (du 17 février 1920)*, p. 20.

³⁴ *Ibid.*, p. 18.

³⁵ Borel, "La Neutralité de la Suisse au sein de la Société des Nations," 27 *Revue générale de droit int. public*, 2nd ser., 1920, p. 153. See, also, Mowat, "The Position of Switzerland in the League of Nations," *British Year Book of International Law*, 1923-24, p. 90. The most complete account is that of Professor W. E. Rappard, in a brochure entitled *L'Entrée de la Suisse dans la Société des Nations* (Geneva, 1924).

Versailles, but the King, as a high contracting party, was specially represented for each of them and such special representatives signed the treaty. The later ratification was in the name of the King, and did not specifically mention the British units.³⁶ In the Annex to the Covenant, the Dominions³⁷ are named subadjacently to the British Empire. So that by the single ratification by the King, each of them became a member as distinct from the British Empire which is also a member. In its quality as member of the League, the "British Empire" is not therefore to be taken to include the Dominions. Communication between the Secretariat and the Dominions is direct, and does not pass through the London Foreign Office as intermediary.³⁸ As members of the League of Nations, the British Dominions would seem to have equal status with other members. M. Clemenceau, President Wilson and Mr. Lloyd George signed a statement at the Peace Conference, on May 6, 1919, expressing their entire concurrence in Sir Robert Borden's view that "upon the true construction" of the first and second paragraphs of Article 4 of the Covenant "representatives of the self-governing Dominions of the British Empire may be selected or named as members of the Council."³⁹ Arrangements of the British Empire and

³⁶ But the Canadian Parliament, for example, took the same action as was taken by the London Parliament; i.e., it authorized the Canadian Government to issue the necessary Orders in Council to give effect to the treaty, and by Order in Council of September 12, 1919, His Majesty the King is "humbly moved to approve, accept, confirm and ratify the said Treaty of Peace, for and in respect of the Dominion of Canada." See Canadian Sessional Paper No. 41j (Special Session, 1919).

Canada's independence with reference to treaties entered into by the British Empire has been instanced, recently, by Premier Mackenzie King's statements concerning the Treaty of Lausanne, made in the Canadian House of Commons on April 2, 1924. See 59 Canada House of Commons Debates, 987. See also telegrams exchanged on this subject between the British and Canadian Governments, published in Canadian Sessional Paper No. 232, A. 1924.

³⁷ The general term "Dominions" is used in this connection to describe the Dominion of Canada, the Commonwealth of Australia, the Union of South Africa, the Dominion of New Zealand, and India, though it is not a term of art. See Nathan, "Dominion Status," in Grotius Society Transactions, Vol. VIII, p. 117. The term is sometimes applied to Newfoundland and to Southern Rhodesia. But a recent writer has said: "Newfoundland is technically a Colony rather than a Dominion, and the fact that she was not given a separate place in the Peace Conference, and in the League of Nations, marks her as definitely inferior in status to the Dominions." H. Duncan Hall, *The British Commonwealth of Nations* (1920), p. 253n. Southern Rhodesia is also a Colony with responsible government. See article, "Southern Rhodesia," in *Round Table* for December, 1923, pp. 180-186. Cf., generally, Scott, *Autonomy and Federation Within Empire* (1921).

³⁸ See Lewis, "The International Status of the British Self-Governing Dominions," *British Year Book of International Law*, 1922-23, p. 21; H. Duncan Hall, *The British Commonwealth of Nations* (1920), c. XI.

³⁹ See Canadian Sessional Paper, No. 41h (Special Session, 1919), p. 19. Similarly, nationals of the Dominions may be selected as judges of the Permanent Court of International Justice, and Article 10 of the Statute would not seem to exclude such nationals' sitting with nationals of the United Kingdom. The Canadian Nationality Act of 1921 seems to

the British Dominions *inter se*⁴⁰ do not seem to have the effect of placing any of them in an inferior position in the enjoyment of League membership.

10. *Elections to membership by the Assembly.* Twelve states not invited to become original members of the League, were elected to membership by the Assembly during 1920-23. In every case the Assembly acted on an application for membership. The applications to date have not followed any common form, and most of them have been somewhat informal. Nor has the acceptance of membership voted by the Assembly usually been effected in a formal manner. Strictly, such acceptance should have all the requisites of a formal adhesion or accession to a treaty,⁴¹ for after membership is effected the Covenant must have the force of a treaty binding the member. But it would seem that in some instances such formality has been lacking.⁴² In certain cases, declarations were made by the representatives of the state applying for admission. For example, the Finnish delegate, in a letter to Lord Robert Cecil, made a general declaration committing his government to take steps to effect any requisite reforms for the protection of minorities.⁴³

The Government of Luxemburg gave the assurance, in writing, that "the government will take the necessary measures to bring the constitutional laws of the country into harmony with the obligations involved in admission into the League of Nations."⁴⁴ The telegram of application from the Abyssinian Government contained the following declaration: "The Abyssinian Government is prepared to accept the conditions laid down in Article 1 of the Covenant and to carry out all obligations incumbent upon Members of the League of Nations."⁴⁵ Moreover, the Abyssinian delegation was required to sign a declaration adhering to the obligations of Article 2, paragraph 1, of the Convention of St. Germain of September 10, 1919, concerning the slave trade, and undertaking to conform to the principles set forth in the Convention and Protocol of St. Germain of September 10, 1919, concerning the traffic in arms.⁴⁶

The delegates of the three states admitted by the Second Assembly were required to sign identical declarations with reference to their international

have been passed with a view to this situation. See Borden, *Canadian Constitutional Studies*, p. 130.

⁴⁰ See the principles agreed upon by the Imperial Conference of 1923 with reference to the negotiation, signature and ratification of treaties. British Parl. Papers, 1923, Cmd. 1987.

⁴¹ Austria, Bulgaria and Hungary are signatories of the Treaties of St. Germain, Neuilly, and Trianon respectively. Since each of these treaties incorporates the Covenant, acceptance of membership by these Powers may properly be less formal.

⁴² The six states admitted by the First Assembly all sent letters or telegrams of thanks to the Secretary-General. Official Journal, 1921, p. 96-98.

⁴³ Records of First Assembly, Plenary Meetings, p. 585.

⁴⁴ *Ibid.*, p. 586.

⁴⁵ Records of Fourth Assembly, Plenary Meetings, pp. 375-6.

⁴⁶ *Ibid.*, p. 125.

obligations for the protection of minorities.⁴⁷ In 1921, almost a year after her admission to the League, Albania signed a declaration containing stipulations for the protection of minorities,⁴⁸ based on a recommendation of the First Assembly.⁴⁹

The application of the Irish Free State contained the following declaration⁵⁰: "The Government of the Irish Free State is prepared to accept the conditions laid down in Article 1 of the Covenant, and to carry out all the obligations involved in membership of the League." The Irish Parliament passed a statute in confirmation of this declaration.⁵¹ But in his letter of September 3, 1923, the Secretary-General of the Irish delegation stated that "the application for membership of the League is made subject to an authority obtained expressly in our Legislature, and such authority is governed . . . in particular by the aforesaid clause 49 of the Constitution."⁵² Clause 49 of the Irish Constitution reads: "Save in the case of actual invasion, the Irish Free State (*Saorstát Éireann*) shall not be committed to active participation in any war without the assent of the *Oireachtas*."⁵³

11. *Members elected.* At the First Assembly, on December 15, 16 and 17, 1920, six states were elected to membership: Albania, Austria, Bulgaria, Costa Rica, Finland and Luxemburg. Albania and Finland had not been named in the Annex to the Covenant as original members because of their uncertain political status in 1919. Austria and Bulgaria had been allies of Germany, and a general policy was adopted at the Peace Conference of excluding Germany and her allies at the beginning.⁵⁴ Luxemburg had been represented at the Hague Conferences of 1899 and 1907, but was not invited

⁴⁷ Records of the Second Assembly, Committee Meetings, Vol. 2, pp. 533, 580, 583.

⁴⁸ Minutes of the 14th Session of the Council, p. 160, p. 115.

⁴⁹ Records of the First Assembly, Plenary Meetings, pp. 568-9.

⁵⁰ Records of Fourth Assembly, Plenary Meetings, p. 166.

⁵¹ The League of Nations [Guarantee] Act, 1923.

⁵² Printed in a pamphlet entitled "Irish Free State, Status and Constitution," published by the Irish delegation to the Fourth Assembly.

⁵³ English Law Reports, 60 Statutes, p. 638.

⁵⁴ For example, both Germany and Austria, when the conditions of peace had been handed to them, expressed in their replies the desire to be members of the League. See "Comments of the German Delegation on the Conditions of Peace," pp. 14-15, 22; and Note No. 21, *Notes de la Délégation de la République d'Autriche* (22 mai-6 août), pp. 86-89. In the covering letter to the "Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace," dated June 16, 1919, the answer is made to Germany's request that the Allies are unable to admit Germany at once, but that if the German people prove their good intentions by their acts, the Allied and Associated Powers believe that "it will be possible at an early date to complete the League of Nations by the admission of Germany thereto." In a note dated July 9, 1919, M. Clemenceau replied to the Austrian delegation that the Allies do not intend to exclude Austria "for long", and in the covering letter to the "Reply of the Allied and Associated Powers to the Observations of the Austrian Delegation on the Conditions of Peace," dated Sept. 2, 1919, occurs the phrase, "La Société des Nations, dans laquelle les Puissances alliées et associées espèrent que la République d'Autriche sera admise à une date très rapprochée."

to become an original member. Costa Rica's government in 1919 was not recognized by various other governments; although the Tinoco Government had declared war on Germany, Costa Rica was not represented at the Peace Conference. The reason for this was stated by Secretary Lansing before the Senate Committee on Foreign Relations to be the objection of the United States which had not recognized the Tinoco Government.⁵⁵ The President of the United States Senate had sent a message of congratulation to the Tinoco Government on its entrance into the war, however.⁵⁶ Costa Rica reestablished friendly relations with Austria by an exchange of notes dated October 31, 1919 and May 10, 1920.⁵⁷

The Second Assembly admitted Esthonia, Latvia and Lithuania, on September 22, 1921. All of these states had applied for admission in 1920, but their admission had been postponed at that time, though they were allowed to participate in the work of the technical organizations of the League. These three states, taken up out of former Russian territory, had not achieved a definite international status in 1920.⁵⁸

The Third Assembly admitted Hungary on September 18, 1922. Hungary had applied in 1921, but she had requested that consideration of her application be postponed when in 1921 disputes arose about the interpretation and execution of Article 71 of the Treaty of Trianon.

The Fourth Assembly elected the Irish Free State and Abyssinia to membership, on September 10, 1923 and September 28, 1923, respectively. The special status of the Irish Free State was recognized by the British Government when Articles of Agreement for a Treaty were signed by British and Irish delegations on December 6, 1921.⁵⁹ A provisional government had been set up, and with the adoption of the Irish Constitution, on December 6, 1922 this became the Government of the Irish Free State.⁶⁰ Abyssinia has long had a measure of independence. As far back as 1889, she signed a treaty of commerce and amity with Italy.⁶¹ By the Treaty of London

⁵⁵ Hearings before the Committee on Foreign Relations, United States Senate, 1919, p. 160, pp. 206-209.

⁵⁶ *Ibid.*, p. 206-7.

⁵⁷ 113 Brit. & For. State Papers, 916.

⁵⁸ They had not yet been recognized *de jure* by any state member of the League. Their recognition by Russia as independent states dates from 1920. Latvia was recognized *de jure* by Russia in the Treaty of Riga, August 11, 1920, 2 League of Nations, Treaty Series, 196. Lithuania was recognized *de jure* by Russia in the Treaty of Moscow, July 12, 1920, 3 League of Nations, Treaty Series, 106. Esthonia was recognized *de jure* by Russia in the Treaty of Tartu, February 2, 1920, 11 League of Nations, Treaty Series, 51. See, in general, Dennis, *The Foreign Policies of Soviet Russia*, c. V. (1924).

Esthonia's case for admission was elaborated by Professor A. Piip, before the Grotius Society in England in 1920. See Piip, "Esthonia and The League of Nations," in *Grotius Society Transactions*, Vol. VI, p. 35.

⁵⁹ British Parliamentary Papers, 1921, Cmd. 1560.

⁶⁰ British Year Book of International Law, 1923-4, p. 242.

⁶¹ 81 Brit. & For. State Papers, 733. Italy seems to have considered that this treaty gave her a protectorate. Gooch, *History of Modern Europe, 1878-1919*; p. 278.

of December 13, 1906, Great Britain, France and Italy had agreed to co-operate in maintaining her independence and integrity.⁶² She has treaties with other great Powers, Great Britain, France and the United States⁶³ among them.

12. *The special case of Luxemburg.* On February 23, 1920, Luxemburg applied to be admitted to membership in the League, while maintaining her neutrality under the guarantee of the League.⁶⁴ The neutrality of Luxemburg was based on the guarantee in the treaty of May 11, 1867. This treaty was enumerated in Article 40 of the Treaty of Versailles as one of the treaties with reference to which Germany renounced "the benefit of all the provisions inserted in her favor." By Article 40, also, Germany "adheres to the termination of the régime of neutrality of the Grand Duchy," though the régime cannot yet be said to be terminated. Before a sub-committee of the First Assembly, the representatives of Luxemburg explained that they did not ask that Luxemburg be released from the obligations of Article 16 of the Covenant; they agreed that Luxemburg would allow the passage of troops authorized by the Council, and would coöperate in economic and financial measures undertaken. But they asked to be relieved from any obligation to participate in any military operations, even in defense of their country. They did not seek complete disarmament, but desired to keep a police force of 3000 men.⁶⁵ While the sub-committee had the problem under consideration, the Luxemburg delegates withdrew the reservations they had made, and agreed to accept all the obligations of the Covenant,⁶⁶ declaring that the government would propose the necessary changes in the constitution without delay. The modification of the constitution had not yet been effected in the summer of 1921, when the Luxemburg Government asked the Secretary-General for an opinion on the provisional status of Luxemburg with regard to its rights and obligations towards the League pending revision of the constitution. The reply of the Secretary-General stated that as far as the League was concerned, Luxemburg's admission was final and absolute and without reservations, and that her rights and obligations were established once and for all by that admission.⁶⁷

13. *Applicants for membership not admitted.* The First Assembly had before it requests for admission from Armenia, Azerbaidjan, Georgia, Lichtenstein and the Ukraine. All of these requests were denied.

In 1920, various parts of the former Russian Empire were asserting autonomy and seeking recognition as independent states. Such were Azerbaidjan, Georgia, and the Ukraine. Azerbaidjan had received "*de facto*

⁶² 34 Martens, N.R.G. (2d Ser.), p. 556.

⁶³ 1 Malloy, *Treaties, Conventions, etc.*, 466.

⁶⁴ Assembly Document 2 A, pp. 5-6.

⁶⁵ Records of First Assembly, Meetings of Committees, Vol. 2, pp. 225-6.

⁶⁶ *Ibid.*

⁶⁷ Official Journal, 1921, pp. 706-8.

recognition" in early 1920, from Great Britain, France and Italy; but later in the year, the recognized government had difficulties and its authority was ineffective. The Assembly committee reported that "Azerbaijan does not appear to have a stable government whose authority extends over the whole of its territory", and for this reason admission was denied, no member of the League voting for it.⁶⁸ Georgia's request was denied by a divided vote, in spite of Dr. Nansen's strong plea for admission.⁶⁹ The Assembly committee had recommended examination of her request "with sympathy," and that, pending subsequent decisions, Georgia be allowed to participate in the League's technical organizations. This recommendation was approved by the Assembly.⁷⁰ The Ukraine was also denied admission because of her uncertain status.

14. *The special case of Armenia.* Armenia had a somewhat stronger claim to admission, by reason of her signature of the Treaty of Sèvres of August 10, 1920,⁷¹ as well as a treaty for the protection of minorities with the British Empire, France, Italy and Japan on the same day.⁷² Dr. Nansen explained that if Armenia were admitted to the League, that would exclude the possibility of finding a Power to take a mandate over her. Moreover, an effort was then being made by President Wilson to fix her boundaries.⁷³ The Assembly did, however, express a hope that the problem of Armenia's boundaries would be handled so as to make possible her admission in 1921. Later in the session of the First Assembly, on December 18, 1920, a resolution was adopted stating that the Assembly would continue to cooperate with the Council "which is entrusted with the duty of safeguarding the future of Armenia, referring for advice, if it should be necessary, to the members of the League."⁷⁴ While the Assembly was deliberating, in fact, events were in progress which, it later appeared, ended the existence of the Armenian Government. On February 25, 1921, the Council recognized that the future of Armenia depended on the fate of the Treaty of Sèvres.⁷⁵

15. *The special cases of Lichtenstein, San Marino and Monaco.* The First Assembly also refused to admit the Principality of Lichtenstein. This little country possesses undoubted "sovereignty," though she deposes to

⁶⁸ Records of the First Assembly, Plenary Meetings, p. 651. See, however, the general reference to the Caucasian states in the recommendation as to the protection of minorities, p. 569.

⁶⁹ Records of the First Assembly, Plenary Meetings, pp. 630-633.

⁷⁰ *Ibid.*, p. 634.

⁷¹ 113 Brit. & For. State Papers, p. 652.

⁷² *Ibid.*, p. 458.

⁷³ President Wilson's decision was announced on January 2, 1921.

⁷⁴ Records of the First Assembly, Plenary Meetings, p. 729.

⁷⁵ Minutes of the Twelfth Session of the Council, p. 18; Official Journal, 1921, p. 152. Cf. Rougier, "L'Assemblée de la Société des Nations," 28 *Revue Générale de Droit International Public*, 197, 383.

other Powers various of her functions, such as the control of customs, the administration of posts, and diplomatic representation. Her application⁷⁶ had been made on July 15, 1920, through the Swiss Minister in London, and the Swiss representatives supported her application throughout.⁷⁷ San Marino had also applied for admission on April 25, 1919, and the Principality of Monaco, on April 6, 1920. These latter raised less difficulty, for San Marino failed to furnish information which would base the consideration of her application, and Monaco appears to have withdrawn her application.⁷⁸ Monaco would seem to have been in a less favorable position also because of her treaty with France of July 17, 1918,⁷⁹ by which her foreign policy was entrusted to the control of France. The case of these small countries called for a consideration of the whole question of a special arrangement to be made for them. Each of these states is probably "fully self-governing," within the meaning of that term. The problem would arise, also, if Andorra should apply for admission to the League.

16. *Special arrangement for diminutive states.* In declining to admit Lichtenstein to membership, the First Assembly expressed the wish that the Committee on Amendments to the Covenant would "consider whether and in what manner it would be possible to attach to the League of Nations sovereign states which, by reason of their small size, cannot be admitted as ordinary members." This committee later presented three alternative methods of attachment: (1) association with the League, with full representation but without a vote; (2) representation by some other state, a member of the League; (3) admission to membership with full privileges to be exercised only where their special interests are involved. The Second Assembly considered the matter in the first committee, which reported finally that experience should be awaited before any definite conditions were laid down.⁸⁰ This report being adopted by the Second Assembly, the question has since been allowed to rest.

17. *States not members.* The following may be listed as the states not members of the League of Nations:⁸¹

⁷⁶ Assembly Document No. 18, 1920.

⁷⁷ Official Journal, 1921, pp. 438-9; Records of First Assembly, Plenary Meetings, pp. 643, 668.

⁷⁸ Records of Second Assembly, Plenary Meetings, p. 686.

⁷⁹ 11 Martens, N.R.G., 3 Ser., p. 313. Article 5 of this treaty provides: "Le Gouvernement français prêterait au Gouvernement princier ses bons offices pour lui faciliter l'accès à ses côtés des Conférences et Institutions internationales, notamment de celles ayant pour objet l'organisation de la Société des Nations." By Article 436 of the Treaty of Versailles, of June 28, 1919, the signatory Powers "took note" of this treaty between France and the Principality.

⁸⁰ Records of Second Assembly, Plenary Meetings, p. 820.

⁸¹ See a somewhat different list in Schücking and Wehberg, *Die Satzung des Völkerbundes*, pp. 140 ff. See, also, 65 Congressional Record, pp. 6912-13.

The following might also be included in this list: Newfoundland, a self-governing part of the British Empire, which in a sense is included in the "British Empire" which is a member;

Afghanistan	Hedjaz
United States of America	Iceland
Dominican Republic	Iraq
Ecuador	Mexico
Egypt	Russia
Germany	Turkey

This list omits the diminutive states of Andorra, Lichtenstein, Monaco, and San Marino, as well as the separate states which formed the Russian Socialist Federated Soviet Republic and which now compose the Russian Union of Socialist Soviet Republics.

(a) Afghanistan has recently signed treaties with various other countries. A trade convention between Great Britain and Afghanistan was signed on June 5, 1923.⁸²

(b) The Dominican Republic was not invited to membership in the League. She had severed diplomatic relations with Germany during the war, but was not represented at the Peace Conference, and has not since applied for membership. To some extent, her isolation may be due to her special relation with the United States.

(c) Ecuador played a small rôle in the war and her representatives signed the Treaty of Versailles. But ratification has not yet been effected.

(d) The new status of Egypt dates from the note presented by Lord Allenby to the Sultan, on February 21, 1922, by which the British Government proclaimed the end of its protectorate and Egypt therefore became an independent sovereign state.⁸³ The new Constitution of Egypt was promulgated on April 19, 1923.⁸⁴ The new state has now been recognized by the United States, and Egypt maintains a minister in Washington.

(e) Iceland achieved a new position in November, 1918, by the Act of Union defining her relations with Denmark,⁸⁵ but the foreign affairs of Iceland are still handled by Denmark. On July 2, 1919, a commercial representative of the Icelandic Government addressed an inquiry to the Secretary-General of the League of Nations as to the possible conditions of Iceland's accession to the Covenant;⁸⁶ but the inquiry seems to have been followed by no further action.

(f) Iraq (Mesopotamia) became detached from the Ottoman Empire as a

the Free City of Danzig, whose High Commissioner is appointed by the Council of the League; Trans-Jordan, which still has a somewhat uncertain status. Cf. Piccioni, "Le Statut International de Dantzic," 28 *Revue Générale de Droit International Public*, 84.

⁸² British Treaty Series, 1923, No. 21, Cmd. 1977.

⁸³ British Parliamentary Papers, 1922, Cmd. 1592. In regard to the international status of Egypt, cf. Pupikofer, "L'Égypte, état souverain," 49 *Journal du droit international privé* (1922), pp. 373-378.

⁸⁴ British Year Book of International Law, 1923-24, p. 238.

⁸⁵ 12 Martens, N.R.G., 3 Ser., p. 3.

⁸⁶ Official Journal, 1920, p. 265.

result of the war. By the abortive Treaty of Sèvres,⁸⁷ it was to have been "provisionally recognized" as an independent state, "subject to the rendering of administrative advice and assistance by a Mandatory" until it should be "able to stand alone", in accordance with Article 22 of the Covenant. The terms of the mandate were to be formulated by the Principal Allied Powers and submitted to the Council for approval. In Article 3 of the Treaty of Lausanne of July 24, 1923, provision is made for tracing Turkey's frontiers with Iraq, by arrangement between Turkey and Great Britain. In practice, Iraq is considered to be covered by the fourth paragraph of Article 22 of the Covenant, and the situation proceeds much as if a mandate were in force. Great Britain has become the Mandatory. In 1921 a draft mandate⁸⁸ was prepared, but the final terms of the mandate have not yet been recognized by the Council.

On August 23, 1921, Feisal Ibn Hussein ascended the throne as King of Iraq, having been chosen by popular vote. On October 10, 1922, a treaty⁸⁹ was made with Great Britain by which he was recognized as King. Article 6 of this treaty provides that "His Britannic Majesty undertakes to use his good offices to secure the admission of Iraq to membership in the League of Nations as soon as possible." In April, 1923, a protocol was signed providing for the termination of this treaty on Iraq's becoming a member of the League of Nations⁹⁰—or in any case, not later than four years from the ratification of the treaty of peace with Turkey.

(g) Mexico was in a disturbed state when the Covenant of the League was in process of drafting, and was not mentioned in the Annex to the Covenant.⁹¹ Nor has she since applied for membership.

(h) At the Conference of Lausanne, on December 14, 1922, Ismet Pasha declared that Turkey would be happy to enter the League on the conclusion of peace. Various provisions of the Treaty of Lausanne, of July 24, 1923, are placed under the guarantee of the League.⁹² This treaty has not yet come into force, and no application for membership has been made by Turkey. But Turkey was represented at the Second General Conference on Communications and Transit, held in Geneva, November 15 to December 9, 1923.

18. *The special position of the United States of America.* Though a signatory to the Treaty of Versailles with Germany, the Treaty of St. Germain

⁸⁷ Articles 94-97.

⁸⁸ British Parliamentary Papers, 1921, Cmd. 1500.

⁸⁹ Official Journal, 1922, p. 1505; British Parliamentary Papers, 1922, Cmd. 1757.

⁹⁰ British Year Book of International Law, 1923-4, p. 242; Official Journal, 1923, p. 728.

⁹¹ Secretary Lansing stated to the Senate Committee on Foreign Relations, on August 6, 1919, that the United States was not responsible for Mexico's not having been invited. Hearings before the Committee on Foreign Relations, United States Senate, 1919, p. 209.

⁹² See also the Greco-Turkish agreement of January 30, 1923, concerning the exchange of populations, which provides for a mixed commission, certain members of which are to be chosen by the Council of the League of Nations.

with Austria, and the Treaty of Trianon with Hungary, the United States has not ratified any of these treaties and is not a party to the Covenant. On November 19, 1919 and March 19, 1920, resolutions for advising and consenting to the ratification of the Treaty of Versailles with various reservations were defeated in the United States Senate.⁹³ On the latter occasion forty-nine of the Senators voted in favor of ratification, and thirty-five against, but the necessary two-thirds vote was lacking.

But the Government of the United States has coöperated with organs of the League of Nations in various ways. It sent representatives, in an unofficial and consultative capacity, to the Brussels Financial Conference in 1920. It sent observers to the second Conference on Transit and Communications in 1923, to the Conference on Customs Formalities in 1923, and to the Conference on Obscene Publications in 1923. The American Government was represented in 1924 at two meetings of the Temporary Mixed Commission on Reduction of Armaments, planning for a new arms traffic convention. Its representatives attended the fourth session of the Advisory Committee on Traffic in Opium and Dangerous Drugs in January, 1923, in an unofficial and consultative capacity; and again in May, 1923. The same delegation was sent to Geneva, in September, 1923, to consult with a committee of the Fourth Assembly in its consideration of the report on the opium traffic. In December, 1923, the Department of State appointed a representative on the preparatory committee to arrange for the Opium Conferences to be held in November, 1924. In 1922, the American Government sent a representative to a meeting of the Advisory Committee on Traffic in Women and Children, in an advisory and consultative capacity. When the Financial Committee discussed the question of a loan for Greek refugees at its meeting in June, 1923, an American representative attended at the request of the United States; an American representative also attended a later meeting of a committee of the Council which discussed the same question.

In an address before the New York State Republican Convention on April 15, 1924, Secretary of State Hughes spoke as follows in regard to coöperation with the League:

This Government cannot appoint its representatives as members of the League's Council, Assembly or committees. And this fact is properly recognized when we appoint so-called "observers" or unofficial representatives, who have appropriate contact with such committees in matters affecting our interests or the humanitarian concerns which appeal to us. They are unofficial simply in the sense that they are and cannot properly become members of the League organization or committees. But, so far as our Government is concerned, they rep-

⁹³ See Finch, "The Treaty of Peace with Germany in the United States Senate," 14 American Journal of International Law, p. 155. See, in general, Schou, "The United States' Refusal to Join the League of Nations," in *Les Origines et L'Oeuvre de la Société des Nations*, I, 297; Hudson, "American Coöperation with the League of Nations," World Peace Foundation Pamphlets, Vol. VII, No. 1 (1924).

resent it just as completely as those designated by the President always have represented our Government in the conferences and negotiations which he properly authorizes in the conduct of our foreign relations.

19. *The special position of Germany.* At the Peace Conference in Paris, in 1919, the German delegation sought repeatedly the inclusion of Germany in the League of Nations. In a note of May 9, 1919, the German delegation submitted a draft scheme for the consideration of the Allied and Associated Powers. The German Observations on the Conditions of Peace presented by the Allied and Associated Powers, of May 29, 1919, dealt at length with the Covenant already elaborated. The counter-proposals put forward by Germany contained various suggestions for changes in the Covenant. In the Allies' reply of June 16, 1919, and particularly in the covering letter which accompanied it, the belief was expressed that on certain conditions it would be "possible at an early date to complete the League of Nations by the admission of Germany thereto." Since the signature of the Treaty of Versailles on June 28, 1919, Germany has not applied for admission to the League.

The question of Germany's admission to membership has figured very prominently in political discussions, however, ever since the beginning of the League's activity. It has been mentioned in the Assembly on several occasions.⁹⁴ On June 26, 1922, Mr. Lloyd George, Prime Minister of Great Britain, replying in the House of Commons to a question addressed to him by Lord Robert Cecil, stated the British Government's position as follows: "This is not a question which concerns Great Britain alone, and it primarily concerns Germany herself; but as far as His Majesty's Government are concerned, we would support a proposal to admit Germany into the League."⁹⁵ The question was most actively discussed in the mid-summer of 1923,⁹⁶ at which time it was reported in the press that French representatives accredited to various governments had expressed the French Government's views opposed to Germany's admission.

In spite of her non-membership, however, Germany has taken a prominent part in numerous activities of the League. She was admitted to membership in the International Labor Organization by the first International Labor Conference in 1919,⁹⁷ and since that time her representatives have sat in the Governing Body of the International Labor Office. In the summer of 1920, the German Government announced its intention to register all of its international treaties and engagements with the Secretariat, in accordance with Article 18 of the Covenant,⁹⁸ and prior to March 1, 1924, the German

⁹⁴ Records of First Assembly, Plenary Meetings, pp. 566, 572-3, 575-6, 577; Records of Third Assembly, Plenary Meetings, Vol. 1, p. 329.

See, generally, Wehberg, "Das Deutsche Volk und der Völkerbund," in *Les Origines et L'Oeuvre de la Société des Nations*, I, 440.

⁹⁵ 155 Parliamentary Debates, Commons, pp. 1638-9.

⁹⁶ New York Times of July 8, 1923.

⁹⁷ International Labor Conference, First Annual Meeting, 1919, pp. 21, 26.

⁹⁸ Official Journal, 1920, p. 444.

Government had communicated thirty-six treaties for registration. Germany has also been represented at various conferences held under the auspices of the League, including the Brussels Financial Conference of 1920, the Aaland Islands Neutralization Conference of 1921, the Barcelona Transit Conference of 1921, the Conference on Traffic in Women and Children in 1921, the European Health Conference at Warsaw in 1922, the Customs Formalities Conference in 1923 and the Conference on Communications and Transit in 1923. The convention between Germany and Poland relating to Upper Silesia was elaborated under the presidency of a chairman appointed by the Council of the League who had the casting vote.⁹⁹ Germans have also sat on the Provisional Health Committee of the League of Nations, and there is a German member of the Permanent Health Committee, and of the Advisory Committee on Traffic in Opium and other Dangerous Drugs. At one time there was a German member of the Committee on Intellectual Coöperation.

20. *The special position of the Hedjaz.* Though a signatory to the Treaty of Versailles of June 28, 1919, the Hedjaz has not ratified that treaty and has never become a member of the League. An early list of members appearing in the Official Journal erroneously included the Hedjaz.¹⁰⁰ In 1920, the King of the Hedjaz appealed to the Council against the arrest and imprisonment by the French authorities of certain members of the Administrative Council of Lebanon. Since peace had not yet been concluded between Turkey and the Allied Powers, the Council decided that it had no competence to deal with the matter.¹⁰¹

In 1923, the Hedjaz Government addressed an inquiry to the British Foreign Office as to the method by which the Hedjaz might become a member of the League.

21. *The special position of Russia.* The government set up in Russia after the second revolution of 1917 was not generally "recognized" by other Powers in 1918 and took no part in the Peace Conference at Paris.¹⁰² In 1920 the Council of the League decided to send a commission of inquiry to Russia, but the plan had to be given up on account of Russia's hostile attitude. The Soviet Government did, however, coöperate with the League's High Commissioner in the work of repatriation of prisoners of war, and with the Epidemic Commission in its anti-epidemic campaign. Russia was also represented at the European Health Conference in Warsaw in 1922 called by Poland at the invitation of the League, and Russians have participated in some of the interchanges and conferences arranged by the Health Committee of the League. Russia also sent a representative to the

⁹⁹ Official Journal, 1922, p. 117.

¹⁰⁰ *Ibid.*, 1920, p. 299.

¹⁰¹ Records of First Assembly, Plenary Meetings, p. 121.

¹⁰² The treaties of separate peace between Russia and Germany, signed at Brest-Litovsk on March 3, 1918, were later abrogated. By Article 116 of the Treaty of Versailles, Germany "accepted" their abrogation.

preliminary Naval Conference in Rome in February, 1924, which prepared a draft convention for extending the principles of the Washington treaty for the limitation of naval armament to non-signatory states. In March, 1924, the Russian Government, in a memorandum¹⁰³ commenting on the draft treaty of mutual assistance, reiterated its "negative point of view, frequently expressed, towards the League of Nations in its present form and as at present constituted."

22. *Procedure for admission by the Assembly.* The applications for admission have in each instance been made before the actual convening of the Assembly which considered them. So that the agenda of each Assembly has made specific reference to them. The agenda has in each case referred to applications for admission in general, in order to leave open the possibility of considering applications which might be received after the Assembly meets. The application is always considered by one of the committees.¹⁰⁴ At the First Assembly, the fifth committee set up various sub-committees to deal with the applications, and each of these sub-committees investigated the following questions with respect to each applicant:¹⁰⁵

- (a) Was its application for admission to the League in order?
- (b) Was the government applying for admission recognized *de jure*, or *de facto*, and by which states?
- (c) Was the applicant a nation with a stable government and settled frontiers? What were its size and its population?
- (d) Was it fully self-governing?
- (e) What had been its conduct, including both acts and assurances, with regard to: (i) its international obligations; (ii) the prescriptions of the League as to armaments?

When the committee report comes before the plenary Assembly, the question is put whether the state in question is to be admitted, not whether the report is to be adopted. On this question, a two-thirds vote is required for admission by Article 1 of the Covenant, and the vote is always by *appel nominal*.¹⁰⁶ The First Assembly decided, however, that the heads of delegations should reply "yes" or "no" from their seats, instead of going to the platform to deposit their voting tickets.¹⁰⁷ On its admission, the representatives of the new member at once take their places in the Assembly.¹⁰⁸

23. *Juridical effect of membership.* The question has arisen several times as to the legal effect of a state's accepting membership in the League,

¹⁰³ C. 166. M. 42. 1924. IX., C.T.A. 396.

¹⁰⁴ The fifth committee of the First Assembly, and the sixth committee of the Second, Third and Fourth Assemblies.

¹⁰⁵ Records of First Assembly, Committee Meetings, Vol. 2, p. 159. See also Fauchille, *Traité de Droit international public*, 8th ed., vol. 1, p. 332; Rougier, "L'Assemblée de la Société des Nations," 28 *Revue Générale de Droit International Public*, 197, 240.

¹⁰⁶ Rules of procedure, rule No. 20, Records of First Assembly, Plenary Meetings, p. 240.

¹⁰⁷ Records of First Assembly, Plenary Meetings, pp. 570-1.

¹⁰⁸ This of course pre-supposes the approval of the credentials of the representatives. Cf. Records of First Assembly, Plenary Meetings, pp. 641, 697.

so far as its relations with other states are concerned. How far is it thereby committed to dealing with other members as independent states? Or as the question was put at the First Assembly, "does such admission imply *de jure* recognition by every member of the League of Nations?"¹⁰⁹ The question was referred to a Committee of International Jurists for an opinion. The jurists were divided in their opinions. "One view held that admission to the League involved the recognition of the state requesting admission by all states members of the League; the other view was that it only entailed observation of the conditions expressly laid down by the Covenant."¹¹⁰ In the subsequent debates on the subject in plenary meetings of the Assembly,¹¹¹ several delegates upheld the view that it would be illogical for a state to vote for the admission of another state which it had not recognized *de jure*. No general resolution on the subject has been adopted by the Assembly, as yet. It would seem, however, that a vote of admission into the League implies some degree of "recognition" by the members of the League.¹¹²

23. *Effective guarantees as to international obligations.* The Covenant requires an admitted state to "give effective guarantees of its sincere intention to observe its international obligations." The history of this clause during its drafting by the League of Nations Commission of the Peace Conference does not indicate the precise purpose or meaning of the clause. In practice, this has not proved an onerous requirement for the states that have applied. In the case of Bulgaria, however, the committee examined carefully the question whether the Bulgarian Government had loyally carried out the Treaty of Neuilly-sur-Seine. The Conference of Ambassadors was requested to supply information on this point, and the replies were printed as appendices to the report of the fifth committee concerning admission.¹¹³ Hungary was admitted upon the solemn undertaking of the Hungarian delegate that Hungary would observe her international engagements, even though the military clauses of the Treaty of Trianon had been only partially carried out.¹¹⁴ This action was taken after a speech by the Czecho-

¹⁰⁹ Records of First Assembly, Committee Meetings, Vol. 2, p. 157.

¹¹⁰ *Ibid.*, p. 160.

¹¹¹ Records of First Assembly, Plenary Meetings, pp. 618-20, 622-5.

¹¹² Cf. Fauchille, *Traité de Droit Int. Pub.*, 8th ed., Vol. 1, pp. 331-6; Scelle, "L'Admission des Nouveaux Membres de la Société des Nations," 28 *Revue Générale de Droit International Public*, 122, 129; Rougier, "La Première Assemblée de la Société des Nations," 28 *Revue Générale de Droit International Public*, 197, 232; Coucke, "Admission dans la Société des Nations et Reconnaissance De Jure," 2 *Revue de Droit International et de Législation Comparée* (3-ser.), p. 320.

Mr. Newton W. Rowell finds that a "new principle was introduced into diplomatic practice" by the Covenant, "viz., that the condition of admission to the family of nations should be not independent and separate sovereignty, but full self-government." Rowell, *The British Empire and World Peace*, p. 178.

¹¹³ Records of First Assembly, Plenary Meetings, pp. 598, 600, 603.

¹¹⁴ Records of Third Assembly, Plenary Meetings, Vol. 2, pp. 122-123.

Slovak delegate pointing out the failure of Hungary to protect the Jewish minority; but even the Czecho-Slovak delegate voted in favor of admission.¹¹⁵

24. *Regulations as to armaments.* The Covenant envisages the acceptance by each new member of "such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments." In the case of each applicant, the Permanent Advisory Commission on Military, Naval and Air Questions and the Assembly committee have made some investigation with a view to making this prescription. In the case of some of the states applying for admission, this examination was rather perfunctory; a statement on the part of the representatives of the applying state was accepted as sufficient, for instance, in the case of Albania.¹¹⁶ In other cases, those of Finland, Esthonia, Latvia and Lithuania, for instance, their military and naval programs were submitted for approval to the Permanent Advisory Commission on Military, Naval and Air Questions.¹¹⁷ In the cases of Costa Rica and Luxemburg, the report of the committee simply includes a statement of the size of the military forces of these countries.¹¹⁸ The examination was more rigorous in the case of certain ex-belligerent states. As regards Austria, it was ascertained that her military forces had been reduced even below the figure allowed by the Treaty of St. Germain, so that the report was favorable to admission in spite of the fact that all the military and air clauses of that treaty had not been fulfilled.¹¹⁹ The case of Bulgaria gave rise to an extensive debate and a special investigation. Some of Bulgaria's neighbors and enemies in the late war opposed her admission, and alleged failure on her part to carry out the military and other clauses of the Treaty of Neuilly.¹²⁰ The committee made inquiries of the Conference of Ambassadors and of the Allied Military Committee in Paris, and only on the basis of the information, in the main favorable, which was thus furnished, did the committee report in favor of Bulgaria's admission.¹²¹ In the case of Hungary this precedent was followed; that is, information was asked for from the Allied Military Committee at Versailles regarding Hungary's execution of the military clauses of the Treaty of Trianon. It was found that these clauses had been only partially executed, but after receiving a solemn undertaking from the Hungarian representative the committee nevertheless reported in favor of admission.¹²² As to Ireland, the opinion of the Permanent Advisory Commission on Military, Naval and Air Questions approving Ireland's military program forms part of the report of the com-

¹¹⁵ Records of Third Assembly, Plenary Meetings, Vol. 1, pp. 115-117.

¹¹⁶ Records of First Assembly, Committee Meetings, Vol. 2, p. 214.

¹¹⁷ *Ibid.*, pp. 223, 231-2; Records of Second Assembly, Plenary Meetings, pp. 334-339.

¹¹⁸ Records of First Assembly, Committee Meetings, Vol. 2, pp. 226, 221.

¹¹⁹ *Ibid.*, pp. 166, 218.

¹²⁰ *Ibid.*, pp. 168-171, 176-183, 193-194.

¹²¹ *Ibid.*, pp. 233-238.

¹²² Records of Third Assembly, Plenary Meetings, Vol. 2, pp. 122-123.

mittee in favor of admission.¹²³ The report in favor of the admission of Abyssinia¹²⁴ contains the declaration that "the Abyssinian Government is prepared to accept the conditions laid down in Article 1 of the Covenant and to carry out all obligations incumbent upon members of the League of Nations," as well as another declaration undertaking to conform to the principles of the Convention and Protocol of St. Germain in regard to the importation of arms and ammunition. The opinion of the Permanent Advisory Commission on Military, Naval and Air Questions regarding Abyssinia's military forces was obtained before she was admitted; also.

25. *Guarantees as to slavery.* Before being admitted to membership, Abyssinia was required to sign a declaration¹²⁵ adhering to the provisions of the Convention of St. Germain of September 10, 1919, concerning slavery.

26. *Guarantees as to protection of minorities.* Guarantees as to the protection of minorities were required from a number of states before they were admitted to the League. Austria, Bulgaria, and Hungary were already bound by the minorities clauses of their respective treaties with the Allied Powers. In the cases of Costa Rica, Luxemburg, Ireland and Abyssinia, no guarantees regarding minorities were required. The delegate of Finland, on the other hand, made a statement in a letter to Lord Robert Cecil that he was convinced that his government would take steps to effect the requisite reforms if the Council should find that the existing laws did not provide for the protection of minorities as required by the League.¹²⁶ The delegates of Esthonia, Latvia and Lithuania were required to sign identical declarations as follows:

The Esthonian [or Latvian, or Lithuanian] Government declares that it is willing to adhere to the recommendation adopted by the Assembly of the League of Nations on December 15, 1920, and is prepared to enter into negotiations with the Council of the League in order to determine the extent of, and the methods of carrying out, its international obligations for the protection of minorities.¹²⁷

¹²³ Records of Fourth Assembly, Plenary Meetings, p. 166. Article VIII of the Articles of Agreement for a Treaty between Great Britain and Ireland, of December 6, 1921, reads as follows: "With a view to securing the observance of the principle of international limitation of armaments, if the Government of the Irish Free State establishes and maintains a military defence force, the establishments thereof shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain." British Parliamentary Papers, 1921, Cmd. 1560.

¹²⁴ Records of Fourth Assembly, Plenary Meetings, pp. 375-6.

¹²⁵ *Ibid.*, p. 376.

¹²⁶ Records of First Assembly, Plenary Meetings, p. 585.

¹²⁷ Records of Second Assembly, Committee Meetings, Vol. 2, pp. 533, 580, 583.

THE TREATY-MAKING POWERS OF THE SENATE

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THE FEDERAL CONVENTION

The section of the Constitution dealing with the treaty-making power was the result of extended discussion and consideration. In the so-called Virginia Plan presented on May 29, 1787, by Edmund Randolph, there is no mention of the subject of treaties, the inference being that he assumed that Congress, as the treaty-making power under the Confederation, would continue to exercise the same powers under the Constitution.¹

The first mention of the treaty-making power occurs in the New Jersey plan presented on June 15 by Mr. Paterson.² In Article Five of this project provision is made for a supreme court to have jurisdiction "in all cases in which foreigners may be interested," and "in the construction of any treaty or treaties, or which may arise on any of the Acts for regulations of trade." In Article Six it is also provided that all "Acts of the United States in Congress made by virtue and in pursuance of the powers hereby and by the articles of confederation vested in them, and all Treaties made and ratified under the authority of the United States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound in their decisions."

On July 26, the convention adjourned until August 6, entrusting to the Committee of Detail the task of preparing a constitution along the lines of the resolutions so far adopted by the convention.³ On August 6, the Committee of Detail reported its draft of a constitution, the first section of Article Nine reading as follows: "The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court."⁴ On August 23, this provision came before the convention for discussion and Mr. Madison promptly "observed that the Senate represented the States alone, and that for this as well as other obvious reasons it was proper that the President should be an agent in Treaties."⁵

But no agreement could be reached on this point, so on August 31, "it was agreed to refer such parts of the Constitution as have been postponed . . . to a Committee of a member from each State."⁶ On September 4,

¹ The Records of the Federal Convention of 1787, ed. by Max Farrand (New Haven, 1911), pp. 17-23.

² *Ibid.*, p. 242.

³ Farrand, *op. cit.*, Vol. II, p. 118.

⁴ *Ibid.*, p. 183.

⁵ *Ibid.*, p. 392.

⁶ *Ibid.*, p. 481.

this committee presented its report, which, with regard to the treaty-making power, was decidedly novel. Up to this time the Senate had been regarded as the chief factor in the treaty-making power, and there were several influences that led the members of the convention at first to favor the Senate rather than the Executive. The more important of these were: (1) "Fear of the autocratic power which might result from placing this important function in the hands of one man; (2) a desire to depart from English precedent; (3) the force of practice under the preceding régime, when, for lack of a president, the Continental and Confederate Congresses had directed the foreign relations of the country, including the work of treaty making; and (4) the feeling that since the states were prohibited from making treaties, some compensation should be granted them by giving this power to their representatives in the upper house, thereby protecting them against injury at the hands of the federal government in its control over foreign relations."⁷

As the convention had progressed with its work the strength of these influences in favor of the Senate waned, and in the report of September 4, the treaty-making power was outlined as follows: "The President by and with the Advice and Consent of the Senate shall have power to make Treaties."⁸ On September 7, this section came up for discussion, and Mr. Wilson, of Pennsylvania, "moved to add, after the word 'Senate' the words 'and House of Representatives.' As treaties he said are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this he thought, so far as it was inconsistent with obtaining the Legislative sanction, was outweighed by the necessity of the latter.

"Mr. Sherman thought the only question that could be made was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature." Mr. Wilson's motion was defeated, only Pennsylvania voting aye.⁹

On September 8, the whole clause relative to the treaty-making power was discussed for the last time, and a Committee on Style was appointed "to revise . . . and arrange the articles which had been agreed to by the House." On September 17, this committee reported a draft of a constitution which was substantially adopted, and on September 17, the convention formally adjourned.¹⁰

THE SENATE AND TREATIES, 1789-1817

"It was the expectation of the framers of the Constitution that the Senate should act as an executive council for the purpose of consulting with the

⁷ Mathews, John M., *The Conduct of American Foreign Relations* (N. Y. 1922), p. 131.

⁸ Farrand, *op. cit.*, Vol. II, p. 498.

⁹ *Ibid.*, Vol. II, p. 538.

¹⁰ *Ibid.*, *op. cit.*, Vol. II, pp. 547, 582, 648, 649.

President relative to appointments to office and the negotiation of treaties.¹¹ There is, however, a striking difference in the phraseology of the Constitution with regard to these two instances of cooperation. In the matter of appointments, the provision reads that "he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint," etc. The necessary implication in this case is that the President has the sole right of nomination, and that the advice and consent of the Senate have reference only to the confirmation of the nomination thus made. But in the case of the negotiation of treaties it is specifically provided that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." This language is significant. "It does not say that the President shall negotiate, and by and with the advice and consent of the Senate shall ratify, treaties; the advice and consent of the Senate apparently operate upon the whole process of treaty making, including negotiation and ratification."¹²

John Jay, however, in his contemporary exposition of this clause, does not appear to have believed that the Senate should, in the actual business of negotiating treaties, have an equal and coordinate share with the President. In Number 64 of the *Federalist* he discusses this clause as follows:

It seldom happens that in the negotiation of treaties, of whatever nature, but that perfect *secrecy* and immediate *dispatch* are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions, who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties, that although the President must, in forming them act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest.¹³

Jay's exposition of the treaty-making clause by no means received universal acceptance. In the debate in the Senate in July, 1789, relative to the removal power of the President, the share that the Senate was supposed to take in the actual negotiation of treaties was clearly set forth in the remarks of Pierce Butler, a delegate to the Federal Convention, and in 1789 representing South Carolina in the Senate. These remarks, preserved in the Diary of John Adams, are only fragmentary, and are as follows: "In treaties, all powers not expressly given, are reserved. Treaties to

¹¹ Mathews, J. M., *op. cit.*, p. 133; Kerr, Clara H., *The Origin and Development of the U. S. Senate*, p. 137.

¹² *Ibid.*, *op. cit.*, p. 133, also Lodge, H. C., *A Fighting Frigate and Other Essays and Addresses*, pp. 231-232.

¹³ Page 403 (Lodge ed. N. Y. 1889).

be gone over, clause by clause, by the President and Senate together, and modelled."¹⁴

The treaty-making functions of the Senate as outlined by Pierce Butler appear to have been regarded as the accepted rule at the beginning of Washington's administration. This is evidenced by the intimate connection which existed for a time between the President and the Senate in the matter of negotiating treaties. The first foreign treaty laid before the Senate for its advice and consent was the consular convention with France, November 14, 1788. This treaty was laid before the Senate on June 11, 1789, for its "consideration and advice." On July 21, John Jay, who had the office of Secretary of Foreign Affairs under the Confederation at the time of the signature of the treaty, was requested to appear before the Senate and make the "necessary explanations." On the following day he complied with the request of the Senate and advised that the treaty be ratified. On July 29, after due consideration, the Senate unanimously consented to the ratification of the treaty.¹⁵

There is an interesting point involved in the ratification of this consular convention. On July 22, after Jay had finished his explanations to the Senate, that body passed the following resolution:

Resolved, That the Secretary of Foreign Affairs, under the former Congress, be requested to peruse the said Convention, and to give his opinion how far he conceives the faith of the United States to be engaged, either by former agreed stipulations, or negotiations entered into by our Minister at the Court of Versailles, to ratify in its present sense or form, the Convention now referred to the Senate.

In Jay's written reply which he submitted five days later to the Senate, he recommended ratification. This recommendation he based upon two grounds: first, that the treaty was negotiated in accordance with the instructions given, thus obligating the contracting nations to ratify it; second, that the Continental Congress had promised to ratify a consular convention with France that should contain certain provisions. These provisions had been incorporated in the present treaty.¹⁶

In the ratification of this consular convention with France because of the alleged obligation of a state to adhere to a treaty that had been negotiated in accordance with instructions, the United States was following the principles of international law as then understood and accepted.¹⁷ If during the course of the negotiation of treaties the President had continued to ask the advice of the Senate, then the right of the United States to amend or alter conventions that had been drafted in conformity with definite instructions would have been certainly questionable. The power of the Senate to amend

¹⁴ Adams, John, Works (ed. by C. F. Adams, Boston 1851), Vol. III, p. 409.

¹⁵ Executive Journal, Vol. I, pp. 5, 7, 9.

¹⁶ *Ibid.*, Vol. I, pp. 7-8.

¹⁷ Moore, J. B., Digest of International Law, Vol. V, pp. 184-202.

at will would probably not have reached its present development. But when active cooperation with the Senate during the actual process of treaty making ceased to be resorted to by Presidents, and when their sanction was sought only after the treaty had been negotiated, then the Senate's right of amendment or rejection became of increasing importance.¹⁸

The close cooperation which at first existed between the Executive and the Senate during the actual negotiation of treaties is well exemplified in the convention concluded with the Creek Indians in 1789. In the early months of the first national administration it had naturally been assumed that the President would personally consult with the Senate with regard to nominations and treaties. In view of this contingency, the members of the Senate thought it advisable to formulate certain rules to govern such consultations, so on August 6, Mr. Izard, Mr. King, and Mr. Carroll were appointed as a committee "to wait on the President of the United States, and confer with him on the mode of communication proper to be pursued between him and the Senate, in the formation of treaties, and making appointments to offices."¹⁹

On August 8 and 10, this committee formally consulted with the President, who freely expressed his sentiments. At the conference on August 8, Washington remarked that "in all matters respecting *Treaties*, oral communications seem indispensably necessary; because in these a variety of matters are contained, all of which not only require consideration, but some of them may undergo much discussion; to do which by written communication would be tedious without being satisfactory." At the conference on August 10, Washington expressed himself as follows:

The President has the power, by and with the advice and consent of the Senate, to make treaties and to appoint officers. The Senate, when this power is exercised, is evidently a council only to the President, however its concurrence may be to his acts. It seems incident to this relation between them, that not only the *time*, but the *place* and *manner* of consultation, should be with the President. It is probable that the place may vary. The indisposition or inclination of the President may require, that the Senate should be summoned to the President's house. Whenever the government shall have buildings of its own, an executive chamber will no doubt be provided, where the Senate will generally attend the President. It is not impossible that the place may be made to depend in some degree on the nature of the business. . . . In treaties, the agency is perhaps as much of a legislative nature, and the business may possibly be referred to their deliberations in their legislative chamber.

The *manner* of consultation may also vary. The indisposition of the President may supersede the mere question of convenience. The inclination or ideas of different Presidents may be different. The

¹⁸ Hayden, Ralston, *The Senate and Treaties, 1789-1817* (N. Y. 1920), p. 10.

¹⁹ Executive Journal, Vol. I, p. 16; Crandall, S. B., *Treaties, Their Making and Enforcement* (Washington, D. C. 1916), pp. 67-68.

opinion, both of President and Senators, as to the proper manner, may be changed by experience. In some kinds of business it may be found best for the President to make his propositions orally and in person, in others by a written message. . . . In other cases, again, as in treaties of a complicated nature, it may happen, that he will send his propositions in writing, and consult the Senate in person after time shall have been allowed for consideration. Many other varieties may be suggested as to the *mode* by practice.

He then suggested that:

The Senate should accommodate their rules to the uncertainty of the particular mode and place, that may be preferred, providing for the reception of either oral or written propositions, and for giving their consent and advice in either the *presence* or *absence* of the President, leaving him free to use the mode and place that may be found most eligible and accordant with other business, which may be before him at the time.²⁰

The Senate concurred in these views of the President, and on August 21, 1789, a resolution was adopted which made provision for conferences with the Executive. On this very day, shortly after the Senate had adopted its rules of procedure, the following message was received from the President:²¹

Gentlemen of the Senate:

The President of the United States will meet the Senate, in the Senate Chamber, at half past eleven o'clock, to-morrow, to advise with them on the terms of the treaty to be negotiated with the southern Indians.

(Signed) GO. WASHINGTON.

On the following day the President made his personal appearance on the floor of the Senate Chamber with reference to the negotiation of treaties. There is little in the formal pages of the Executive Journal to indicate the success of this method of conducting American foreign relations, but fortunately we have the colorful account set forth in the famous diary of Senator William Maclay of Pennsylvania. It is evident from the pages of this intimate source that this first presidential appearance produced in the Senate Chamber a decidedly uncomfortable atmosphere, one certainly not calculated to promote easy and harmonious relations between the two agencies of the treaty-making power. The account in Maclay is as follows:

August 22d, Saturday.—Senate met, and went on the Coasting bill. The doorkeeper soon told us of the arrival of the President. The President was introduced, and took our Vice-President's chair. He rose and told us bluntly that he had called on us for our advice and consent to ~~some propositions~~ some propositions respecting the treaty to be held with the Southern Indians. Said he had brought General Knox with him, who was well acquainted with the business. He then turned to General Knox, who was seated on the left of the chair. General Knox handed him a paper,

²⁰ The Writings of George Washington, edited by W. C. Ford (N. Y. 1891), Vol. XI, pp. 417-419.

²¹ Executive Journal, Vol. I, p. 20.

which he handed to the President of the Senate, who was seated on a chair on the floor to his right. Our Vice-President hurried over the paper. Carriages were driving past, and such a noise, I could tell it was something about "Indians," but was not master of one sentence of it. Signs were made to the doorkeeper to shut down the sashes. Seven heads, as we have since learned, were stated at the end of the paper which the Senate were to give their advice to. They were so framed that this could not be done by aye or no. . . .

Mr. Morris rose. Said the noise of carriages had been so great that he really could not say that he had heard the body of the paper which had been read, and prayed that it might be read again. It was so read. It was no sooner read than our Vice-President immediately read the first head over again, and put the question: Do you advise and consent, etc? There was a dead pause. Mr. Morris whispered to me, "We will see who will venture to break silence first." Our Vice-President was proceeding, "As many as—"

I rose reluctantly. . . . Mr. President: The paper which you have now read to us appears to have for its basis sundry treaties and public transactions between the Southern Indians and the United States and the States of Georgia, North Carolina, and South Carolina. The business is new to the Senate. It is of importance. It is our duty to inform ourselves as well as possible on the subject. I therefore call for a reading of the treaties and other documents alluded to in the paper before us.

I cast an eye at the President of the United States. I saw he wore an aspect of stern displeasure. . . . I had at an early stage of the business whispered to Mr. Morris that I thought the best way to conduct the business was to have all the papers committed. . . . Mr. Morris hastily rose and moved that the papers communicated to the Senate by the President of the United States should be referred to a committee of five, to report as soon as might be on them. He was seconded by Mr. Gunn.

Mr. Butler rose, made a lengthy speech against commitment; said we were acting as a council. No council ever committed anything. Committees were an improper mode of doing business; it threw business out of the hands of the many into the hands of the few, etc.

I rose and supported the mode of doing business by committees; that committees were used in all public deliberative bodies, etc.

. . . As I sat down, the President of the United States started up in a violent fret. "This defeats every purpose of my coming here," were the first words that he said. He then went on that he had brought his Secretary of War with him to give every necessary information; that the Secretary knew all about the business. . . . He cooled, however, by degrees. Said he had no objection to putting off this matter until Monday. . . . He rose a second time. . . . We waited for him to withdraw. He did so with a discontented air. —

On the following Monday, August 24, 1789, Washington again personally consulted the Senate with reference to this treaty with the Creek Indians. On this occasion he "wore a different aspect," and manifested "a spirit of accommodation." Mr. Maclay once again voiced his objections to certain clauses, "yet a shamefacedness, or I know not what, flowing from the presence

of the President, kept everybody silent." The "old treaties with the Creeks, Choctaws, and Chicasaws, were made the basis of future treaty, though none of them were read to us nor a single principle of them explained (but it was late). The twenty thousand dollars applied to this treaty, if necessary. This closed the business. The President of the United States withdrew, and the Senate adjourned."²²

The importance of this treaty with the Creek Indians lies in the fact that the President, following what he believed to be the spirit of the Constitution, endeavored to act in conjunction with the Senate in the actual negotiation of treaties. The evident embarrassment which his presence in the Senate chamber created, induced him to abandon further personal consultation with the assembled Senate.

But although Washington soon abandoned the practice of personal consultation with the Senate, he continued for some time to solicit the advice of the Senate previous to, or during the actual negotiation of treaties. Since the ratification of the treaty of 1783 the United States had been constantly at odds with Great Britain, one of the points at issue being the exact determination of the northeast boundary line. After the organization of the national government in 1789, Washington was particularly anxious to compose these difficulties, so on February 9, 1790, he requested the advice of the Senate in the following message:

Gentlemen of the Senate:

You will perceive from the papers herewith delivered, and which are enumerated in the annexed list, that a difference subsists between Great Britain and the United States, relative to the boundary line between our Eastern and their territories.

In my opinion it is desirable that all questions between this and other nations, be speedily and amicably settled; and in this instance I think it advisable to postpone any negotiations on the subject, until I shall be informed of the result of your deliberations, and receive your advice as to the propositions most proper to be offered on the part of the United States.

In accordance with the President's request, the Senate, on March 24, 1790, advised "that effectual measures should be taken, as soon as conveniently may be, to settle all disputes with the crown of Great Britain relative to that line."²³

Washington took no immediate notice of this advice on the part of the Senate, but as affairs did not mend, on October 7, 1790, he had a conference with Hamilton and John Jay, during the course of which they discussed the question of sending an informal mission to England to secure some sort of an accommodation. At the suggestion of Hamilton, the President finally

²² Journal of William Maclay (edited by E. S. Maclay, N. Y., 1890), pp. 128-132.

²³ Executive Journal, Vol. I, pp. 36-37, 42.

decided to entrust the matter to Gouverneur Morris, who was then in France attending to some private business.²⁴

The Morris mission, however, was an utter failure, and as the United States seemed about to drift into war with Great Britain, a last effort was made to avert such a contingency.²⁵ Once again the Senate took action, this time informally. A dominant little group composed of Oliver Ellsworth, George Cabot, Rufus King, Caleb Strong, and Robert Morris, together with Alexander Hamilton, then Secretary of the Treasury, in March, 1794, began to exert all possible influence upon Washington to appoint a special mission to England.²⁶ This senatorial group at first favored Hamilton for this difficult position, but in an interview with Ellsworth on March 10, Washington suggested that inasmuch as Hamilton did not possess the popular confidence his appointment might be inexpedient.²⁷ On April 14, 1794, Hamilton addressed a long letter to Washington in which he urged the appointment of Jay.²⁸ On April 16 Washington sent a message to the Senate nominating Jay as envoy extraordinary, and a spirited opposition immediately became manifest. On April 17 the following important resolution was introduced: "That previous to going into the consideration of the nomination of a special Envoy to the Court of Great Britain, the President of the United States be requested to inform the Senate of the whole business with which the proposed Envoy is to be charged."²⁹

This resolution, which would have associated the entire Senate with the President in the actual negotiation of the treaty, was defeated, and only those members who were favorable to the mission were consulted by the administration.³⁰ The question of instructions now arose, and on April 21 Rufus King, Oliver Ellsworth, George Cabot, and Alexander Hamilton had a conference during which "all agreed that as the President might give the instructions without consulting the Senate, it would be most advisable so to conduct the business, and that the Treaty, if any should be formed, should be signed subject to the approbation of the Senate."³¹

The instructions as finally drawn were in a large part the handiwork of Hamilton himself, with but "minor additions made by Randolph, Jefferson's successor, as Secretary of State." But "to that part of the instructions

²⁴ Diary of George Washington, 1789-1791 (ed. by B. J. Lossing, N. Y. 1860), pp. 13-15, 19.

²⁵ Bemis, Samuel F., *Jay's Treaty* (N. Y. 1923), pp. 47-62.

²⁶ Brown, W. G., *Life of Oliver Ellsworth* (N. Y. 1905), pp. 211-214; Hamilton, J. C., *History of the Republic of the U. S. of America* (N. Y. 1860), Vol. V, pp. cviii, civ; Lodge, H. C., *Life and Letters of George Cabot* (Boston, 1877), Chaps. III, IV.

²⁷ King, Charles R., *Life and Correspondence of Rufus King* (N. Y. 1894), Vol. I, pp. 517-519.

²⁸ Hamilton, John C., *op. cit.*, Vol. 5, pp. 544-545.

²⁹ Executive Journal, Vol. I, pp. 150-152.

³⁰ Hayden, Ralston, *op. cit.*, pp. 62-72.

³¹ King, Charles R., *op. cit.*, Vol. 1, p. 523.

purely the ideas of Randolph, Jay paid little serious attention."³² On May 6, the instructions were handed to Jay, and on May 12, 1794, he embarked for England.

On November 19, 1794, the Jay Treaty was signed, and on March 7, 1795, it was placed in the hands of President Washington. The opposition that had contested Jay's nomination, once more showed open hostility. In the negotiation of previous treaties the Senate had been consulted as a council of advice, either in person or by message. Thus by special messages of August 4, 1790, August 11, 1790, January 18, 1792, and March 23, 1792, Washington sought the advice of the Senate relative to the conclusion of treaties with certain Indian tribes; and upon each occasion the advice and consent of the Senate was formally voted.³³

On April 1, 1792, Jefferson, in a written communication, informed Washington that inasmuch as the approbation of the Senate was necessary with reference to the validation of a treaty, it would be wise to consult that body before opening negotiations with Algiers.³⁴ Washington promptly accepted this advice, and in a message of May 8, 1792, he inquired of the Senate whether it would approve a treaty with Algiers for the payment of certain sums for the ransom of American captives.³⁵ On January 11, 1792, Washington sent to the Senate the nominations of William Carmichael, and William Short as commissioners plenipotentiary to negotiate a treaty with Spain with reference to the free navigation of the Mississippi. As an explanation of his course in sending these nominations Washington also sent a report from Jefferson, Secretary of State, stressing the importance of this mission, and setting forth the reason for its despatch.³⁶

The Senate confirmed these nominations on January 24, but owing to Washington's wishes, additional instructions were given these plenipotentiaries to extend the negotiations to certain commercial matters. Jefferson, in submitting to Washington additional instructions of this nature, observed that he believed that they also should be submitted to the Senate for approval.³⁷ These instructions, therefore, were on March 7, sent to the Senate by President Washington, who inquired whether that body would "advise and consent to the extension of the powers of the Commissioners, as proposed, and to ratification of a treaty which shall conform to those instructions, should they enter into such a one with that Court." On March 16, the Senate formally resolved "that they advise and consent to the extension of the powers of the Commissioners, as proposed, and that they will advise and consent to the ratification of such treaty as the said Com-

³² Bemis, S. F., *op. cit.*, p. 210.

³³ Executive Journal, Vol. I, pp. 55, 60, 98, 116.

³⁴ Mss. Jefferson Papers, Vol. 73.

³⁵ Executive Journal, Vol. I, pp. 122-123.

³⁶ *Ibid.*, Vol. I, pp. 95-96.

³⁷ Writings of Thomas Jefferson (Ford edition, N. Y. 1892-98), Vol. V, p. 442.

missioners shall enter into with the Court of Spain, in conformity to those instructions." ³⁸

On June 8, 1795, the President placed the Jay Treaty before the Senate, and the struggle for ratification began. On June 22, 1795, Burr, as the leader of the opposition, introduced the following resolution: "That the further consideration of the treaty concluded at London, the 19th of November, 1794, be postponed, and that it be recommended to the President of the United States, to proceed without delay to further friendly negotiations with his Britannic Majesty, in order to effect alterations in the said treaty, in the following particulars." Then followed some seven proposed amendments. ³⁹

On June 23 Burr's resolution was defeated by a vote of 20 to 10, and the whole course of the treaty-making power was probably changed. The resolution itself was in perfect accord with the theory of the relation between the two agencies of the treaty-making power. As already mentioned, it had been the practice of the Executive to consult with the Senate prior to the negotiation of treaties, and had the Senate taken favorable action upon Burr's resolution, "Washington might well have considered such an act as notice, that in the future, the Senate would expect to participate in the determination of the conditions under which a proposed treaty would be signed; at the very least it would have suggested forcibly the expediency of always consulting them before opening negotiations." ⁴⁰

On June 24, 1795, the Senate agreed to a resolution advising and consenting to ratification on condition that "there be added to the said treaty an article whereby it shall be agreed to suspend the operation of so much of the 12th article, as respects the trade which his said Majesty thereby consents may be carried on, between the United States and his islands in the West Indies." ⁴¹ This qualified consent to the Jay Treaty at first caused doubts in Washington's mind as to whether the proposed new article to the Jay Treaty would have to be submitted to the Senate before the treaty could take effect. On June 29, Washington requested the written opinions of the heads of the departments on this subject, and Hamilton, though not at that time an officer of the government, was also asked to give his written advice. ⁴²

Hamilton appears to have believed it necessary to submit this additional article to the Senate, but the Secretaries of State, War, and Treasury, together with the Attorney-General, agreed that such submission was unnecessary. ⁴³ Edmund Randolph, Secretary of State, in his written

³⁸ Executive Journal, Vol. I, pp. 106, 115.

³⁹ *Ibid.*, Vol. I, pp. 178, 183-184.

⁴⁰ Hayden, Ralston, *op. cit.*, pp. 79-80.

⁴¹ Executive Journal, Vol. I, pp. 186-187.

⁴² Writings of Washington (Ford edition), Vol. XIII, pp. 59, 60.

⁴³ Mss. Hamilton Papers, July 14, 1795; also Writings of Washington, Vol. XIII, p. 67.

opinion of July 12, 1795, argued strongly against resubmission. For his part he believed that the Senate "intended their resolution of the 24th of July, 1795, to be a final act; and that they do not expect the proposed article to be submitted to them before the treaty operates. . . . In this case they rely, that he [the President] will strictly follow their advice. If he ratifies without again consulting them, he undertakes for the accuracy with which that advice has been followed. If he ratifies what they did not agree to, their security consists in this; that the treaty will, for that cause, not be the Supreme Law of the Land."⁴⁴ The suspension of the operation of the 12th article was agreed to by the British Government, and the ratifications of the treaty were exchanged at London, October 28, 1795, without the resubmission of the article to the Senate.⁴⁵

An important feature of the action of the Senate with reference to the Jay Treaty lies in the fact that it was the first treaty to which the Senate advised an amendment, or more strictly, a reservation.⁴⁶ If the Senate had been closely associated with the President during the actual process of negotiation, and had consented to definite instructions, it would have been much more difficult for them to have acted as an independent branch of the treaty-making power and to suggest alterations. With the Jay Treaty the Senate's power of amendment passed from mere theory into actual practice, and the action taken at that time formed a most important precedent.

The conduct of the negotiations leading to the Jay Treaty went a long way towards establishing a feeling of independence on the part of the Executive towards the Senate with reference to consulting them before negotiating a treaty. The Senate, however, was somewhat slow in admitting that any change had really taken place. Thus in 1806, when our relations with Great Britain were daily growing more strained, a very interesting discussion as to the treaty-making power developed out of the introduction of the following resolution:

Resolved, That the President of the United States be requested to demand and insist upon the restoration of the property of their citizens, captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in time of peace; and upon the indemnification of such American citizens, for their losses and damages sustained by these captures and condemnations; and to enter upon such arrangements with the British Government, on this and all other differences subsisting between the two nations, and particularly respecting the impressment of American seamen, as may be consistent with the honor and interests of the United States, and manifest their earnest desire to obtain for themselves, and their citizens, by amicable negotiations, that justice to which they are entitled.

⁴⁴ *Ms. Washington Letter Book*, Vol. 22, pp. 184-185.

⁴⁵ Malloy, Wm. M., *Treaties, Conventions, etc.* (Washington, 1910), p. 590.

⁴⁶ Wright, Quincy, *Amendments and Reservations to the Treaty*, *Minnesota Law Review*, Vol. 4, pp. 14-17.

In the debate that followed all Senators agreed that the Senate would be within its constitutional rights in passing such a resolution, but many believed it to be inexpedient. Worthington thought that it would doubtless "embarrass the executive in negotiating a treaty to settle our differences," while Adair contended that the Senate should be satisfied with expressing its "opinion on the great principle of right and leave it altogether with our Chief Magistrate to enter into and point out the details." Anderson, on the other hand, believed that the true meaning of the treaty-making clause in the Constitution was that "the advice should precede the making of the treaty, and that it was couched in the language in which we find it, for the purpose of obtaining the opinion of the Senate as to the principles upon which the treaty should be made." Mitchell also remarked that "in questions touching our foreign relations, the Senators are declared by the supreme law of the land to be the President's counsellors. In urgent and arduous cases it was not only allowable for them to exercise this right, but it was their duty to do so." On February 14, 1806, the resolution passed by a vote of 23 yeas to 7 nays, many of the Senators voting in favor of the resolution because they believed it would strengthen the hands of the President in the proposed negotiations.⁴⁷ The overwhelming majority in favor of the resolution would appear to indicate that up to that time at least the Senate believed that it had a constitutional right to participate in every stage of the treaty-making power.

In the course of the next decade, however, the members of the Senate came to think quite differently with reference to the independence of the Executive in the negotiation of treaties. On December 19, 1815, the Senate advised and consented to the ratification of the treaty of commerce and navigation with Great Britain, signed July 3, 1815. Immediately after the Senate had advised ratification, Rufus King introduced a resolution which provided that the Senate "recommend to, and advise, the President of the United States to pursue further and friendly negotiations with his Britannic Majesty" for six enumerated purposes. On December 21, King introduced a revised list of subjects for negotiations with Great Britain, which was referred to the Committee on Foreign Affairs.⁴⁸

On February 15, 1816, Mr. Bibb reported from the Committee of Foreign Affairs. In their report upon the King resolution the committee confined their remarks to the two following considerations: (1) whether there be any circumstances which call for the proposed advice; and (2) whether there would not be serious objections to the interference of the Senate in the direction of foreign relations.

With reference to the first inquiry, the committee believed that the Executive had already made every possible effort to accomplish the objects enumerated in the King resolution, and that the proposed advice of the

⁴⁷ Annals of Congress, 9th Cong. 1st sess., pp. 91, 96-97, 100-101, 105-107, 111.

⁴⁸ Executive Journal, Vol. III, pp. 7-9.

Senate would in no way aid in the conduct of foreign relations. With reference to Senatorial advice the following statement was made:

Is it probable that the proposed advice will aid his exertions? It cannot be presumed that he entertains any doubt concerning the opinion of the Senate with respect to the interests comprised in the motion, and that the committee do not perceive how the expression of solicitude on the part of the Senate in relation to the objects about which no difference of opinion exists can afford any aid whatever.⁴⁹

In considering the second proposition whether there might be serious objections to the proposed Senatorial advice, the report continues:

If it be true that the success of negotiations is greatly influenced by time and accidental circumstances, the importance to the negotiative authority of acquiring regular and secret intelligence cannot be doubted. The Senate does not possess the means of acquiring such intelligence. It does not manage the correspondence with our ministers abroad nor with foreign ministers here. . . . The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success.

. . . . The Committee are therefore of the opinion that the resolution ought not to be adopted.⁵⁰

THE SENATE AND TREATIES, 1817-1923

The above statement of the Committee on Foreign Affairs relative to the treaty-making power exercised a "powerful influence" in establishing the principle of Executive independence in the negotiation of treaties.⁵¹ Since that time there have only been occasional attempts on the part of the Executive "to follow out the clear intention of the framers of the Constitution, in consulting the Senate prior to the opening of negotiations."⁵²

President Jackson, however, in a message to the Senate on May 6, 1830, reverted to the former practice of consulting the Senate prior to the opening of negotiations for a particular treaty. This message of May 6 had reference to a proposed treaty with the Choctaw Indians, and the following passages are full of interest:

The accompanying propositions, in the form of a treaty, have been recently sent to me by special messenger from the Choctaw Nation of Indians, and since it was received a protest against it has been forwarded. Both evince a desire to cede to the United States all their country east of the Mississippi, and both are here submitted.

. . . . In settling the terms of such an agreement, I am disposed to

⁴⁹ Reports of the Senate Committee on Foreign Relations, 1789-1901, Vol. VIII, pp. 22-24.

⁵⁰ Executive Journal, Vol. III, pp. 8, 9, 30.

⁵¹ Hayden, Ralston, *op. cit.*, p. 207.

⁵² Crandall, S. B., *op. cit.*, p. 70.

exercise the utmost liberality, and to concur in any which are consistent with the Constitution, and not incompatible with the interests of the United States and their duties to the Indians. Not being tenacious though, on the subject, I will most cheerfully adopt any modifications which, on a frank interchange of opinions, my Constitutional advisers may suggest and which I shall be satisfied are reconcilable with my official duties.

. . . . To be possessed of the views of the Senate on this important and delicate branch of our future negotiations would enable the President to act much more effectively in the exercise of his particular functions.⁵³

On June 10, 1846, President Polk, in a message to the Senate relative to a proposed treaty with Great Britain in settlement of the Oregon dispute, used language very similar to that of Jackson.⁵⁴ The following excerpts clearly show to what extent he disavowed the theory of Executive independence in the negotiation of treaties:

In the early periods of the Government the opinion and advice of the Senate were often taken in advance upon important questions of our foreign policy. General Washington repeatedly consulted the Senate and asked their previous advice upon pending negotiations with foreign powers; and the Senate in every instance responded to his call by giving their advice, to which he always conformed his action. This practice, though rarely resorted to in later times, was in my judgment eminently wise. . . . The Senate are a branch of the treaty-making power, and by consulting them in advance of his own action, upon important measures of foreign policy which may ultimately come before them for their consideration, the President secures harmony of action between that body and himself.

. . . . Should the Senate, by the constitutional majority required for the ratification of treaties, advise the acceptance of this proposition or advise it with such modifications as they may upon full deliberation deem proper, I shall conform my action to their advice.⁵⁵

On June 12, 1846, the Senate, by a vote of 38 to 12, advised and consented to the proposed treaty with Great Britain in settlement of the Oregon dispute, and acting upon this authorization, President Polk, on June 15, submitted to the Senate the treaty itself. This was promptly ratified by a large majority.⁵⁶

⁵³ Executive Journal, Vol. IV, pp. 97-99.

⁵⁴ Mr. Buchanan, Secretary of State, in his instructions to Mr. McLane, the U. S. Minister to the Court of St. James, Feb. 26, 1846, observed: "The Federal Constitution has made the Senate, to a certain extent, a coördinate branch of the treaty-making power. Without their advice and consent, no treaty can be concluded. . . . Under these considerations, the President, in deference to the Senate, and to the true theory of constitutional responsibilities of the different branches of the Government, will forego his own opinions so far as to submit to that body any proposition which may be made by the British Government, not, in his judgment, wholly inconsistent with the rights and honor of the country." Buchanan, James, Works (ed. by J. B. Moore, Phila., 1909), Vol. VI, pp. 379-380.

⁵⁵ Executive Journal, Vol. VII, pp. 84-85.

⁵⁶ *Ibid.*, Vol. VII, pp. 84, 89, 90, 95.

In the last days of the administration of President Buchanan, the diplomatic relations between the United States and Great Britain were daily growing more strained over a disagreement concerning the interpretation of the Oregon Treaty relative to the Northwestern water boundary. Buchanan, therefore, on February 21, 1861, in a message to the Senate, adverted to this difficulty, and gave as his opinion that the only "mode left of settling the dispute," was "by submitting it to the arbitration of some friendly and impartial power." He then suggested a reference of the dispute to the King of Sweden and Norway, to the King of the Netherlands, or to the Government of the Swiss Republic. He concludes as follows:

The precise questions which I submit are these, Will the Senate approve a treaty, referring to either of the sovereign powers above named, the dispute now existing between the Governments of the United States and Great Britain, concerning the boundary line between Vancouver's Island and the American continent? In case the referee shall find himself unable to decide where the line is by the description of it in the treaty of 15th June, 1846, shall he be authorized to establish a line according to the treaty, as nearly as possible? Which of the three powers named by Great Britain as an arbiter shall be chosen by the United States?⁵⁷

No definite action was taken by the Senate upon this request of President Buchanan until March 13, 1861, when the Senate ordered the secretary to lay before President Lincoln a copy of Buchanan's message. Two days later, March 15, Lincoln sent a message to the Senate relative to the arbitration of the northwestern water boundary, in which he remarked as follows: "I find no reason to disapprove of the course of my predecessor in this important matter, but on the contrary, I not only shall receive the advice of the Senate therein cheerfully, but I respectfully ask the Senate for their advice on the two questions before recited." The Senate several times considered the report of the Senate Foreign Relations Committee on this message of President Lincoln, but on March 27, 1861, it was finally ordered that any action upon it be indefinitely postponed.⁵⁸

In 1861, after the outbreak of the Civil War in the United States, Great Britain, France, and Spain thought the moment most propitious for united action against Mexico in settlement of certain claims of long standing.⁵⁹ The American Minister in Mexico, Mr. Thomas Corwin, well understood the danger of foreign intervention, so on June 29, in a despatch to Seward, Secretary of State, he suggested that the United States relieve Mexico of her pressing financial obligations by a loan.⁶⁰ Secretary Seward at once gave

⁵⁷ Executive Journal, Vol. XI, pp. 278-279.

⁵⁸ *Ibid.*, Vol. XI, pp. 303, 307-308, 357.

⁵⁹ Martin, Percy F., *Maximilian in Mexico* (London, 1914), Chaps IV-XI; Moore, J. B., *Digest of International Law* (Washington, 1906), Vol. VI, pp. 483-507.

⁶⁰ House Ex. Doc., No. 100. 37th Cong. 2d sess., p. 13.

this matter his serious consideration, and on December 19, 1861, President Lincoln transmitted to the Senate a copy of a "draft of a convention with the Republic of Mexico, proposed to the Government of that Republic by Mr. Corwin, the minister of the United States accredited to that Government, together with the correspondence relating to it." In concluding his message Mr. Lincoln observed: "As the subject is of momentous interest to the two Governments at this juncture, the early consideration of it by the Senate is very desirable." The President's message was referred to the Senate Committee on Foreign Relations, but no further action was taken. Under date of January 24, 1862, President Lincoln sent a second message to the Senate enclosing a despatch which had just been received from Mr. Corwin with reference to a grant of authority to negotiate a treaty with Mexico under the terms of which the United States would advance a certain loan to that government. In this second message he remarked:

I have heretofore submitted to the Senate a request for its advice upon the question pending by treaty for making a loan to Mexico, which Mr. Corwin thinks, will, in any case, be expedient. It seems to be my duty to solicit an early action of the Senate upon the subject, to the end that I may cause such instructions to be given to Mr. Corwin as will enable him to act in the manner which, while it will most carefully guard the interests of our country, will at the same time be most beneficial to Mexico.

On February 25, 1862, in response to President Lincoln's two messages, the Senate passed the following resolution of advice:

In reply to the two messages of the President with regard to a treaty with Mexico, the Senate express the opinion that it is not advisable to negotiate a treaty that will require the United States to assume any portion of the principal or interest of the debt of Mexico, or that will require the concurrence of European powers.⁶¹

This negative resolution of the Senate appears definitely to have ended the Mexican negotiations.

On February 10, 1868, President Johnson sent the following message to the Senate:

I transmit a report from the Secretary of State . . . on the subject of a transfer of the Peninsula and Bay of Samana to the United States. The advice and consent of the Senate to the transfer, upon the terms proposed in the draft of a convention with the Dominican Republic, are requested.⁶²

No action appears to have been taken by the Senate in accordance with this presidential request for advice.

On January 15, 1869, President Johnson again asked the advice of the Senate with reference to "the expediency of concluding a convention based

⁶¹ Executive Journal, Vol. XII, pp. 24, 102, 134.

⁶² *Ibid.*, Vol. XVI, p. 163.

upon a protocol signed at London on the 9th of October last for regulating the citizenship of citizens of the United States who have emigrated or who may emigrate from the United States to the British Dominions." ⁶³ On March 16, 1869, Mr. Sumner, from the Senate Committee on Foreign Relations, reported favorably, and on April 14, 1869, the Senate passed the following resolution:

Resolved, That in reply to the message of the President of the United States, of the 15th of January, 1869, transmitting the protocol for a convention between the United States and Great Britain regulating the citizenship of persons who emigrate to and from the two countries, the Senate advise and consent to the negotiation of a convention between the two powers based on the protocol above mentioned. ⁶⁴

The result was the naturalization convention concluded on May 13, 1870, the ratifications of which were exchanged on August 10, 1870.

On May 8, 1871, the dispute between the United States and Great Britain relative to breaches of British neutrality during the American Civil War, was terminated by the signing of the Treaty of Washington. But the treaty did not completely cover all the points at issue, so the British Government proposed a supplementary article. President Grant, in transmitting this article to the Senate, remarked:

The Senate is aware that the consultation with that body in advance of entering into agreements with foreign States has many precedents. In the early days of the Republic General Washington repeatedly asked their advice upon pending questions with such powers

... The importance of the results hanging upon the present state of the treaty with Great Britain leads me to follow these former precedents and to desire the counsel of the Senate in advance of agreeing to the proposal of Great Britain.

On May 25, 1872, the Senate advised and consented to the supplementary article to the Treaty of Washington, provided that it was understood that both governments should "adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of failure to observe neutral obligations." ⁶⁵ This amendment, however, was not acceptable to the British Government, but nevertheless, "taken in connection with the conciliatory spirit in which it was made, [it] proved to be of considerable moral advantage to Fish in continuing the negotiations." ⁶⁶

In 1874 the Canadian Government was anxious to arrange some sort of a reciprocity convention with the United States, so in February of that year, Mr. George Brown was sent down on a preliminary visit to Washington. After a conference with the American officials he reported that the prospects were favorable. He was then empowered to act as the Imperial plenipoten-

⁶³ Executive Journal, Vol. XVI, p. 441.

⁶⁴ *Ibid.*, Vol. XVII, p. 174.

⁶⁵ *Ibid.*, Vol. XVIII, pp. 248, 264.

⁶⁶ Rhodes, Jas. F., History of the United States (N. Y., 1906), Vol. VI, pp. 368-369.

tiary, and together with the British Minister at Washington, a draft treaty was submitted to the Government of the United States.⁶⁷ For a second time during his administration President Grant requested the advice and consent of the Senate with reference to the negotiation of a treaty with Great Britain. In his message to the Senate, June 18, 1874, he animadverted upon the advantages of reciprocity offered by the draft convention, and then concluded:

These provisions, as well as other considerations, make it desirable that this subject should receive attention before the close of the present session. I therefore express an earnest wish that the Senate may be able to consider and determine before the adjournment of Congress whether it will give its constitutional concurrence to the conclusion of a treaty with Great Britain for the purposes already named, either in such form as is proposed by the British plenipotentiaries or in such other more acceptable form as the Senate may prefer.

On February 3, 1875, however, the Senate passed a resolution to the effect that "it is not expedient to recommend the negotiation of the treaty for reciprocal trade with the Dominion of Canada submitted to the Senate, June 18, 1874."⁶⁸ This adverse resolution promptly put an end to any further negotiations.

Some nine years later the question arose as to whether it would be expedient to continue in operation for a further period of seven years the reciprocity convention with Hawaii of January 30, 1875. In this regard, President Arthur, in a message to the Senate, June 9, 1884, asked their advice as follows: "The treaty having been heretofore under consideration by your honorable body, I deem it fitting to consult the Senate in the matter before directing the negotiations to proceed." The Senate appeared to be opposed to the principle of reciprocity, so the matter was indefinitely postponed.⁶⁹

THE SENATE AND THE AMENDING POWER, 1795-1901

Since 1795, the Senate has freely exercised the power to amend treaties submitted by the President. In this regard Senator Henry Cabot Lodge, in a well-known article published in *Scribner's Magazine*, January, 1902, after discussing the amending power, appends a list of "sixty-eight treaties amended by the Senate and afterwards ratified."⁷⁰ Subsequent writers upon foreign relations, such as Foster, Willoughby, and Wright, have ac-

⁶⁷ Colquhoun, A. H. U., *Reciprocity Trips to Washington*, *Canadian Magazine*, March, 1897, pp. 428-429.

⁶⁸ *Executive Journal*, Vol. XIX, pp. 355-356, 502; also Colquhoun, A. H. U., *loc. cit.*, pp. 428-429.

⁶⁹ *Ibid.*, Vol. XXIV, pp. 280, 355, 486; Laughlin, J. L. and Willis, H. P., *Reciprocity* (N. Y. 1903), pp. 93-95.

⁷⁰ Pages 42-43.

cepted this list as correct, and refer to it.⁷¹ This list, however, was probably based upon the collection of United States Treaties compiled by William M. Malloy, which is by no means free from errors. Upon careful examination of the Executive Journals, it appears that instead of sixty-eight treaties there have been but *fifty-seven* treaties amended by the Senate and afterwards ratified by the President. The corrected list is as follows:

Argentine Republic, Extradition Convention, concluded Sept. 26, 1896; ratifications exchanged, June 2, 1900. (Malloy, Vol. I, pp. 25-28; Ex. Jo. Vol. XXX, pp. 377-378.)

Austria-Hungary, Extradition Convention, concluded July 3, 1856; ratifications exchanged, Dec. 13, 1856. (Malloy, Vol. I, pp. 36-38; Ex. Jo. Vol. X, p. 146.)

Bavaria, Convention Abolishing Droit d'Aubaine and Taxes on Emigration, concluded Jan. 21, 1845; ratifications exchanged, Nov. 4, 1845. (Malloy, Vol. I, pp. 56-58; Ex. Jo. Vol. VI, p. 447.)

Bavaria, Extradition Convention, Sept. 12, 1853; ratifications exchanged, Nov. 1, 1854. (Malloy, Vol. I, pp. 58-60; Ex. Jo. Vol. IX, p. 353.)

Belgium, Consular Convention, concluded Mar. 9, 1880; ratifications exchanged, Feb. 25, 1881. (Malloy, Vol. I, pp. 94-99; Ex. Jo. Vol. XXII, p. 372.)

Bolivia, Treaty of Peace, Friendship, Commerce and Navigation, concluded May 13, 1858; ratifications exchanged, Nov. 9, 1862. (Malloy, Vol. I, pp. 113-125; Ex. Jo. Vol. XI, pp. 218-220.)

Bolivia, Extradition Convention, concluded April 21, 1900; ratifications exchanged, Dec. 23, 1901. (Malloy, Vol. I, pp. 125-129; Ex. Jo. Vol. XXXII, pp. 614-615.)

Brazil, Extradition Convention and Protocol, concluded respectively, May 14, 1897, and May 28, 1898; ratifications exchanged, April 18, 1903. (Malloy, Vol. I, pp. 146-152; Ex. Jo. Vol. XXXI, pt. 2, pp. 1346-47.)

Brunswick and Luneburg, Convention Respecting the Disposition of Property, concluded Aug. 21, 1854; ratifications exchanged, July 28, 1855. (Malloy, Vol. I, pp. 156-157; Ex. Jo. Vol. IX, p. 435.)

Chile, Convention to Revive the Claims Convention of Aug. 7, 1892; signed at Washington, May 24, 1897; ratifications exchanged, Mar. 12, 1900. (Malloy, Vol. I, pp. 185-189; Ex. Jo. Vol. XXXI, pt. 2, pp. 1345-46.)

Chile, Extradition Convention, concluded April 17, 1900; ratifications exchanged, May 27, 1902. (Malloy, Vol. I, pp. 192-195; Ex. Jo. Vol. XXXII, pp. 615-616.)

China, Treaty of Trade, Consuls and Emigration, concluded July 28, 1868; ratifications exchanged, Nov. 23, 1869. (Malloy, Vol. I, pp. 234-237; Ex. Jo. Vol. XVI, p. 355.)

Colombia, Claims Convention, concluded Sept. 10, 1857; ratifications exchanged, Nov. 5, 1860. (Malloy, Vol. I, pp. 319-321; Ex. Jo. Vol. XI, pp. 89-91.)

Colombia, Extradition Convention, concluded May 7, 1888; ratifications exchanged, Nov. 12, 1890. (Malloy, Vol. I, pp. 323-326; Ex. Jo. Vol. XXVII, pp. 41-42.)

⁷¹ Foster, John W., *Practice of Diplomacy*, pp. 199-203; Willoughby, Westel W., *Constitutional Law of the United States*, Vol. I, p. 463; Wright, Quincy, *The Control of Foreign Relations*, *American Political Science Review*, February, 1921, p. 9.

Congo, Treaty of Amity, Commerce and Navigation, concluded Jan. 24, 1891; ratifications exchanged, Feb. 2, 1892. (Malloy, Vol. I, pp. 328-333; Ex. Jo. Vol. XXVIII, p. 121.)

France, Convention of Peace, Commerce and Navigation, concluded Sept. 30, 1800; ratifications exchanged, July 31, 1801. (Malloy, Vol. I, pp. 496-505; Ex. Jo. Vol. I, pp. 376-377.)

France, Consular Convention, concluded Feb. 23, 1853; ratifications exchanged, Aug. 11, 1853. (Malloy, Vol. I, pp. 528-533; Ex. Jo. Vol. IX, pp. 122-123.)

France, Additional Article to Extradition Convention, concluded Feb. 10, 1858; ratifications exchanged, Feb. 12, 1859. (Malloy, Vol. I, pp. 533-534; Ex. Jo. Vol. X, pp. 461-462.)

France, Claims Convention, concluded Feb. 8, 1883; ratifications exchanged, June 25, 1883. (Malloy, Vol. I, pp. 540-541; Ex. Jo. Vol. XXIII, pp. 650-658.)

Great Britain, Treaty of Amity, Commerce and Navigation, concluded Nov. 19, 1794; ratifications exchanged, Oct. 28, 1795. (Malloy, Vol. I, pp. 590-606; Ex. Jo. Vol. I, pp. 185-187.)

Great Britain, Extradition Convention, concluded July 12, 1889; ratifications exchanged, March 11, 1890. (Malloy, Vol. I, pp. 740-742; Ex. Jo. Vol. XXVII, pp. 468-471.)

Great Britain, Convention Relating to Fur Seals in Behring Sea, concluded Feb. 29, 1892; ratifications exchanged, May 7, 1892. (Malloy, Vol. I, pp. 746-750; Ex. Jo. Vol. XXVIII, pp. 197-198.)

Great Britain, Convention for the Settlement of Claims under the Behring Sea Convention of Feb. 29, 1892, concluded Feb. 8, 1896; ratifications exchanged, June 3, 1896. (Malloy, Vol. I, pp. 766-769; Ex. Jo. Vol. XXX, pp. 225-226.)

Great Britain, Convention as to the Tenure and Disposition of Real and Personal Property, concluded March 2, 1899; ratifications exchanged, July 28, 1900. (Malloy, Vol. I, pp. 774-776; Ex. Jo. Vol. XXXII, pp. 432-433.)

Hawaii, Treaty of Reciprocity, concluded Jan. 30, 1875; ratifications exchanged, June 3, 1875. (Malloy, Vol. I, pp. 915-917; Ex. Jo. Vol. XX, pp. 41-42.)

Hawaii, Reciprocity Convention, concluded Dec. 6, 1884; ratifications exchanged, Nov. 9, 1887. (Malloy, Vol. I, pp. 919-920; Ex. Jo. Vol. XXV, pp. 708-710.)

Italy, Extradition Convention, concluded Mar. 23, 1868; ratifications exchanged, Sept. 17, 1868. (Malloy, Vol. I, pp. 966-968; Ex. Jo. Vol. XVI, p. 263.)

Japan, Extradition Treaty, concluded April 29, 1886; ratifications exchanged, Sept. 27, 1886. (Malloy, Vol. I, pp. 1025-28; Ex. Jo. Vol. XXV, pp. 508-9.)

Japan, Treaty of Commerce and Navigation, concluded Nov. 22, 1894; ratifications exchanged, March 21, 1895. (Malloy, Vol. I, pp. 1028-35; Ex. Jo. Vol. XXIX, pt. 2, pp. 917-18.)

Mexico, Treaty of Peace, Friendship, Limits and Settlement, concluded Feb. 2, 1848; ratifications exchanged, May 30, 1848. (Malloy, Vol. I, pp. 1107-19; Ex. Jo. Vol. VII, pp. 334-40.)

Mexico, Treaty of Boundary, Cession of Territory, concluded Dec. 30, 1853; ratifications exchanged, June 30, 1854. (Malloy, Vol. I, pp. 1121-25; Ex. Jo. Vol. IX, pp. 309-15.)

Mexico, Extradition Treaty, concluded Dec. 11, 1861; ratifications ex-

changed, May 20, 1862. (Malloy, Vol. I, pp. 1125-27; Ex. Jo. Vol. XII, pp. 227-28.)

Mexico, Convention Regulating Citizenship of Emigrants, concluded July 10, 1868; ratifications exchanged, Feb. 1, 1869. (Malloy, Vol. I, pp. 1132-33; Ex. Jo. Vol. XVI, p. 371.)

Mexico, Claims Convention, concluded Nov. 27, 1872; ratifications exchanged, July 17, 1873. (Malloy, Vol. I, pp. 1134-35; Ex. Jo. Vol. XIX, pp. 12-13.)

Mexico, Commercial Reciprocity Convention, concluded Jan. 20, 1883; ratifications exchanged, May 20, 1884. (Malloy, Vol. I, pp. 1146-52; Ex. Jo. Vol. XXIV, pp. 210-11.)

Mexico, Additional Article to the Convention of July 29, 1882, concluded Dec. 5, 1885; ratifications exchanged, June 27, 1887. (Malloy, Vol. I, pp. 1163-64; Ex. Jo. Vol. XXV, p. 508.)

Mexico, Boundary Convention, concluded Mar. 1, 1889; ratifications exchanged, Dec. 24, 1890. (Malloy, Vol. I, pp. 1167-69; Ex. Jo. Vol. XXVII, p. 613.)

Nicaragua, Extradition Convention, concluded June 25, 1870; ratifications exchanged, June 24, 1871. (Malloy, Vol. II, pp. 1287-90; Ex. Jo. Vol. XVIII, p. 51.)

North German Union, Naturalization Convention, concluded Feb. 22, 1868; ratifications exchanged, May 9, 1868. (Malloy, Vol. II, pp. 1298-99; Ex. Jo. Vol. XVI, p. 208.)

Orange Free State, Extradition Treaty, concluded Oct. 28, 1896; ratifications exchanged, April 20, 1899. (Malloy, Vol. II, pp. 1313-17; Ex. Jo. Vol. XXX, pp. 378-79.)

Ottoman Empire, Treaty of Commerce and Navigation, concluded May 7, 1830; ratifications exchanged, Oct. 5, 1831. (Malloy, Vol. II, pp. 1318-20; Ex. Jo. Vol. IV, pp. 148-50.)

Peru, Claims Convention, concluded Jan. 13, 1863; ratifications exchanged, April 18, 1863. (Malloy, Vol. II, pp. 1408-10; Ex. Jo. Vol. XIII, pp. 143-44.)

Peru, Treaty of Friendship, Commerce, and Navigation, concluded Aug. 31, 1887; ratifications exchanged, Oct. 1, 1888. (Malloy, Vol. II, pp. 1431-43; Ex. Jo. Vol. XXVI, p. 260.)

Peru, Extradition Treaty, concluded Nov. 28, 1899; ratifications exchanged, Jan. 23, 1901. (Malloy, Vol. II, pp. 1445-49; Ex. Jo. Vol. XXXII, pp. 378-79.)

Russia, Extradition Treaty, concluded Mar. 28, 1887; ratifications exchanged, April 21, 1893. (Malloy, Vol. II, pp. 1527-1531; Ex. Jo. Vol. XXVIII, pp. 385-86.)

Samoan Islands, Treaty of Commerce, concluded Jan. 17, 1878; ratifications exchanged, Feb. 11, 1878. (Malloy, Vol. II, pp. 1574-1576; Ex. Jo. Vol. XXI, pp. 220-221.)

Saxony, Convention Abolishing Droit d'Aubaine and Emigration Taxes, concluded May 14, 1845; ratifications exchanged, Aug. 12, 1846. (Malloy, Vol. II, pp. 1610-1611; Ex. Jo. Vol. VII, p. 64.)

Siam, Treaty of Amity and Commerce, concluded May 29, 1856; ratifications exchanged, June 15, 1857. (Malloy, Vol. II, pp. 1629-1633; Ex. Jo. Vol. X, pp. 256-57.)

Sweden and Norway, Treaty of Amity and Commerce, concluded Sept. 4, 1816; ratifications exchanged, Sept. 25, 1818. (Malloy, Vol. II, pp. 1742-1748; Ex. Jo. Vol. III, p. 78.)

Sweden and Norway, Naturalization Convention, concluded May 26, 1869; ratifications exchanged, June 14, 1871. (Malloy, Vol. II, pp. 1758-1760; Ex. Jo. Vol. XVII, p. 577.)

Switzerland, Convention of Friendship, Commerce, and Extradition, concluded Nov. 25, 1850; ratifications exchanged, Nov. 8, 1855. (Malloy, Vol. II, pp. 1763-1768; Ex. Jo. Vol. VIII, pp. 315-17.)

Switzerland, Extradition Treaty, concluded May 14, 1900; ratifications exchanged, Feb. 27, 1901. (Malloy, Vol. II, pp. 1771-1775; Ex. Jo. Vol. XXXII, p. 527.)

Tonga, Treaty of Amity, Commerce and Navigation, concluded Oct. 2, 1886; ratifications exchanged, Aug. 1, 1888. (Malloy, Vol. II, pp. 1781-1784; Ex. Jo. Vol. XXVI, pp. 143-44.)

Tunis, Treaty of Amity, Commerce and Navigation, concluded August, 1797; ratification advised by Senate, Dec. 24, 1799. (Malloy, Vol. II, pp. 1794-1799; Ex. Jo. Vol. I, pp. 263-264.)

Two Sicilies, Convention of Amity, Commerce, Navigation, and Extradition, concluded Oct. 1, 1855; ratifications exchanged, Nov. 7, 1856. (Malloy, Vol. II, pp. 1814-1823; Ex. Jo. Vol. X, pp. 143-144.)

Venezuela, Claims Convention, concluded Dec. 5, 1895; ratifications exchanged, June 3, 1889. (Malloy, Vol. II, pp. 1858-1864; Ex. Jo. Vol. XXV, pp. 422-423.)

Zanzibar, Treaties as to Duties on Liquors and Consular Powers, concluded July 3, 1886; ratifications exchanged, June 29, 1888. (Malloy, Vol. II, pp. 1899-1900; Ex. Jo. Vol. XXVI, p. 237.)

TREATIES (24) AMENDED BY THE SENATE BUT NOT RATIFIED EITHER BECAUSE OF NON-ACCEPTANCE BY OTHER SIGNATORY POWERS OR BY PRESIDENT OF THE UNITED STATES (1824-1901)

Argentine Republic, Additional Article to the Treaty of Friendship, Commerce, and Navigation, July 27, 1853; ratification advised by the Senate with amendments, Jan. 7, 1887. (Executive Journal, Vol. XXV, pp. 686-88.)

Baden, Extradition Treaty, concluded March 10, 1856; ratification advised by the Senate with amendment, Aug. 13, 1856. (Executive Journal, Vol. X, pp. 144-145.)

Belgium, Extradition Treaty, concluded Feb. 11, 1853; ratification advised by the Senate with amendments, June 15, 1858. (Executive Journal, Vol. X, pp. 462-463.)

Chile, Treaty of Friendship, Commerce, Navigation, and Extradition, concluded May 27, 1856; ratification advised by the Senate with amendments, Mar. 10, 1857. (Executive Journal, Vol. X, pp. 232-233.)

Chile, Treaty Relative to the Rights, Privileges, and Duties of Consuls, concluded Dec. 1, 1856; ratification advised by the Senate with amendments, March 10, 1857. (Executive Journal, Vol. X, pp. 232-233.)

China, Exclusion Treaty, concluded Mar. 12, 1888; ratification advised by the Senate with amendments, May 7, 1888. (Executive Journal, Vol. XXVI, pp. 256-257.)

Great Britain, Convention for Suppression of African Slave Trade, concluded Mar. 13, 1824; ratification advised by Senate with amendments, May 22, 1824. (Executive Journal, Vol. III, pp. 385-387.)

Great Britain, Treaty Relative to the Rights of the Mosquito Tribes of Nicaragua, concluded Oct. 17, 1856; ratification advised by the Senate with amendments, Mar. 12, 1857. (Executive Journal, Vol. X, pp. 244-248.)

Great Britain, Treaty to Facilitate the Construction of a Ship Canal to Connect the Atlantic and Pacific Oceans, concluded Feb. 5, 1900; ratification advised by the Senate with amendments, Dec. 30, 1900. (Executive Journal, Vol. XXXII, pp. 621-625.)

Guatemala, Extradition Treaty, concluded Oct. 11, 1870; ratification advised by the Senate with amendments, Mar. 31, 1871. (Executive Journal, Vol. XVIII, pp. 50-51.)

Guatemala, Extradition Treaty, concluded Oct. 11, 1870; ratification advised by the Senate with amendments, Dec. 5, 1888. (Executive Journal, Vol. XXVI, p. 370.)

Mexico, Treaty Relative to Neutral Rights, concluded July 10, 1826; ratification advised by the Senate with amendments, Feb. 26, 1827. (Executive Journal, Vol. III, pp. 570-572.)

Mexico, Extradition Treaty, concluded Feb. 20, 1885; ratification advised by the Senate with amendments, June 3, 1886. (Executive Journal, Vol. XXV, pp. 483-484.)

Mexico, Convention Regulating the Crossing of the Frontier by Cattle, concluded July 11, 1888; ratification advised by the Senate with amendments, Oct. 1, 1888. (Executive Journal, Vol. XXVI, pp. 355-356.)

Netherlands, Extradition Treaty, concluded May 29, 1856; ratification advised by the Senate with amendments, Feb. 16, 1857. (Executive Journal, Vol. X, pp. 194-195.)

Nicaragua, Treaty of Friendship, Commerce and Navigation, concluded June 20, 1855; ratification advised by Senate with amendments, Aug. 13, 1856. (Executive Journal, Vol. X, pp. 146-147.)

Nicaragua, Treaty of Friendship and Commerce, concluded Mar. 16, 1859; ratification advised by the Senate with amendments, June 26, 1860. (Executive Journal, Vol. XI, p. 218.)

Paraguay, Treaty of Friendship, Commerce and Navigation, concluded Mar. 4, 1853; ratification advised by the Senate with amendments, May 1, 1854. (Executive Journal, Vol. IX, pp. 317-319.)

Persia, Treaty of Friendship, Commerce and Navigation, concluded Oct. 9, 1851; ratification advised by the Senate with amendments, Mar. 11, 1852. (Executive Journal, Vol. IX, pp. 373-374.)

Prussia, Extradition Treaty, concluded Jan. 29, 1845; ratification advised by the Senate with amendment, June 21, 1848. (Executive Journal, Vol. VII, pp. 433-34; 462-464.)

Salvador, Treaty of Amity, Consular Privileges and Extradition, concluded May 29, 1862; ratification advised by the Senate with amendment, June 23, 1862. (Executive Journal, Vol. XII, pp. 369-370.)

Switzerland, Treaty of Amity, Consular Privileges and Extradition, concluded Sept. 15, 1846; ratification advised by the Senate with amendment, Mar. 3, 1847. (Executive Journal, Vol. VII, p. 237.)

Texas, Treaty of Amity, Commerce and Navigation, concluded July 30, 1842; ratification advised by the Senate with amendments, Mar. 3, 1843. (Executive Journal, Vol. VI, pp. 186-189.)

Oriental Republic of Uruguay, concluded Aug. 28, 1852; ratification advised by the Senate with amendment, June 13, 1854. (Executive Journal, Vol. IX, p. 333.)

WHEN DOES TITLE TO PRIZE PASS?

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I

"The whole constitution of prize courts, taken in connection with the conclusive effect of their sentences . . . and the exercise of their functions, being admittedly a belligerent right, is an anomaly in jurisprudence. . . . Hence it is that while its authority is derived exclusively from one nation, and that a belligerent, it passes a conclusive sentence on the title to property belonging to another, and that a neutral state, whose only appeal in the last resort is through diplomatic inference to the justice of the sovereign of the captor."¹

This unique feature of the prize court has given rise to many varied and interesting problems. This thesis, however, will be limited to the question of the transfer, from the original owner to the captor, of the property in the thing seized.

There is considerable discussion as to whether the prize court is an international or a municipal court. The more important question, however, would seem to be, what law does it administer? Agreement is practically unanimous to the effect that the prize court does administer international law,² but the German conception is probably contrary.³ Nor is the Japanese position altogether clear.⁴ There is some opinion to the effect that it

¹ Wm. De Burgher, *Elements of Maritime International Law*, p. 212. See a similar statement in Baty's Twiss, *Continuous Voyage*, p. 12. Also Lawrence's Wheaton, 960. For a history of the prize court, consult Oppenheim, *International Law*, 3rd ed., p. 270 *et seq.*

² The *Zamora*, 1916, 2 A. C. 77; the *Kronprinzessen Victoria*, 1919 A. C. 261-268; the *Noordam*, 1920 A. C. 904, 912; the *Prize Cases*, (1862) 2 Black 666; J. Moseley, *Contraband of War*, p. 1; R. J. Hurd, *Prize Court Practice and Procedure*, p. 1; Lawrence, *International Law*, p. 400; Halleck, *International Law*, Vol. 2, p. 433; Baty-Morgan, *War: Its Conduct and Legal Results*, p. 358. Pitt-Cobbett, *Cases and Opinions on International Law*, p. 138; *Memorandum of the British Ambassador of April 24, 1916*, 3 *Diplo. Corr.* 78; SPECIAL SUPPLEMENT TO THE JOURNAL, Vol. IX, p. 163. Lord Stowell was strongly of this opinion. (*The Recovery*, (1807) 6 C. Rob. 348.)

³ Huberich & King, *Development of German Prize Law*, p. 3; same, German Prize Code, pp. VII, XII, XIV, XVI. See the decision of the Imperial High Prize Court in Berlin, in the case of the *Elida* (1915), reported in this JOURNAL, Vol. X, p. 917: "Prize courts, when judging the legality of prize action, can take general international principles only into account when the prize regulation contains no instructions and therefore tacitly refers to the principles of international law."

⁴ The *Bolvik*, 2 Russ. & Japan Pr. Cas. 114.

is a national court.⁵ This matter becomes acute when the court is called upon to enforce a municipal regulation contrary to international law.⁶

Dealing as it does with matters exclusively maritime, questions of prize are determined by courts of admiralty. In the United States and Great Britain, the same tribunal has jurisdiction over both the prize and instance cases, but in some of the Continental countries, the prize court is an administrative body, dealing with prize cases only. But in all, the object is the same, "to give a title to the captured property which will be internationally recognized."⁷ The sentence of a competent prize court is conclusive as to all the world.⁸

The law of prize is a law of war. "There are certain rights which a belligerent enjoys by the law of nations in virtue of belligerency, which may be enforced even against neutral subjects and to the prejudice of their perfect freedom of action; and this, because without those rights, maritime war would be frustrated and the appeal to the arbitrament of war be made of no effect."⁹

The right of the neutral,¹⁰ and indeed of the enemy, to carry on commerce cannot be doubted. The law of prize is thus concerned with these two conflicting rights, and is a compromise between them.¹¹ The prize court is not an institution for punishment.¹²

The answer to the question of what may constitute prize is not an altogether easy one. In a general way it may be said there must be a maritime flavor to the thing seized or captured;¹³ but this does not necessarily mean that the res must be on the high seas¹⁴ or even afloat.¹⁵

⁵ H. R. Pyke, *The Law of Contraband of War*, p. 214; J. B. Moore, *Problems of War and Commerce*, p. 11; C. D. Allin, "English and German Prize Courts," 2 Minn. L. R. 22; N. Bentwich, *Cases on International Law*, p. 154; 2 Westlake, *International Law*, p. 288 ff.; Oppenheim, 271.

⁶ The *Zamora*, *supra*. Contrast the position there maintained with that set forth in the *Elida*, note 3, *supra*. For a discussion of this see Baty and Morgan, *op. cit.* p. 358.

⁷ Baty & Morgan, *op. cit.*, p. 357.

⁸ The *Juando*, (1818) Fed. Cas. 7553, and authorities cited; 2 Halleck 428; De Burgher, *op. cit.*, p. 185.

⁹ The *Leonora*, 1919 A. C., p. 984. See also, 2 Halleck 126; De Burgher, *op. cit.*, pp. 212-213.

¹⁰ *Memorandum of United States on Status of Armed Merchant Ships*, March 25, 1915, Naval War College, 1916, p. 95: "Generally speaking, a citizen of the United States can sell what he pleases to any belligerent."

¹¹ The *Knight Commander*, 1 Russ. & Jap. Pr. Cas. 74: "All agree that the principles of international law as to naval prizes must be based upon a compromise between the interests of the belligerent and of the neutral—a compromise arising from the necessity of protecting the interest of both parties." With this view, De Burgher accords, pp. 189-190. For a somewhat different conception see the *Buena Ventura* (1898), 87 Fed. 927, 929.

¹² "Mens Rea in Prize Law," in Grotius Society Publications, Vol. VI, p. 99; the *Oscar II*, 1919 A. C. 588.

¹³ Risley, *Law of War*, 144; Tiverton, *Principles and Practice of Prize Law*, p. 2; 2 Halleck, Baker ed., p. 125n.

¹⁴ *Craft captured on Victoria Nyanza*, 1919, p. 83; the *Follina* (1814), 1 Dods. 450; Judg-

It is generally said that the prize court, to be competent, must be established in the country of the captor. This has been extended, however, so as to give validity to the decrees of a court of the captor's sovereign, sitting in the port of an ally.¹⁶ But the rule is clear that neither the decree of a prize court of an ally,¹⁷ nor of the captor's sovereign, sitting in a neutral port, is of any binding force.¹⁸ The neutrality and prize regulations issued during the recent World War, are to the same effect.¹⁹

Such cases, however, should be distinguished from those involving the situs of the *res* pending adjudication. If practical, the property seized should be brought into a port of the country of the captor, but it may be taken into the port of an ally or even a neutral.²⁰ The rule today, however, is modified, so that the prize cannot remain indefinitely in the neutral port, without being subject to restoration.²¹ This is emphasized in the various proclamations issued by neutral governments during the recent World War to the effect that prize may be brought into neutral ports only under exceptional circumstances.²² The Hague Convention allows prize to be

ment number eight, *Judgments of the High Prize Court of the Republic of China*, p. 40; Tiverton, *op. cit.*, p. 2; J. B. Scott, *Status of Enemy Merchant Ships*, this JOURNAL, Vol. II, p. 259.

¹⁶ The *Roumanian*, 1916, 1 A. C. 124 (goods seized on shore); the *Anichab*, 1919 P. 329 (vessel beached above high water mark); the *Achilles*, 1919 P. 340 (in warehouse); the *Baweah*, 1918 P. 58 (in warehouse); the *Batavia*, 1918 P. 66 (in warehouse); the *Glenroy*, 1918 P. 82; the *Eden Hall*, 2 Br. & Col. Pr. Cas. 84 (in warehouse); the *Dardelo*, 2 Br. & Col. Pr. Cas. 339 (in warehouse); *Ten Bales of Silk*, 2 Br. & Col. Pr. Cas. 248 (cargo landed); the *Achaia*, 1 Br. & Col. Pr. Cas. 635 (cargo landed); *U. S. v. 703 Casks of Rice*, (1862) Fed. Cas. 16253 b (in warehouse); the *Manchuria*, (1904), 2 Russ. & Jap. Pr. Cas. 100 (ship in drydock); the *Thaka*, *ibid.*, p. 116 (vessel on shore near drydock); Wheaton, *Maritime Capture and Prize*, p. 278. For a limitation upon this doctrine, see *Brown v. U. S.*, (1814) 12 U. S. 110. For a definition of port, see the *Mowe*, (1915) P. 1.

¹⁶ The *Polka*, (1854) 1 Spinks 447; the *Christopher*, (1799), 2 C. Rob. 209; the *Chacon v. 89 Bales*, (1821) Fed. Cas. 2568; De Burgher, *op. cit.*, pp. 196-98; Wheaton, *Maritime Capture and Prize*, p. 252; 2 Halleck 412-422.

¹⁷ The *Christopher*, *supra*.

¹⁸ The *Polka*, (1854) Spinks 57; the *Comet*, (1804) 5 C. Rob. 285; the *Nostra de Concieres*, (1804) 5 C. Rob. 294; the *Nostra Signora de Los Angeles*, (1801) 3 C. Rob. 287; the *Kierlight*, (1800) 3 C. Rob. 96; the *Heinrich & Maria*, (1799) 4 C. Rob. 43; the *Perseverance*, (1799) 2 C. Rob. 239; the *Flad Oyen*, (1799) 1 C. Rob. 135; *Williams v. Armroyd*, (1813) 7 Cranch 423; *Rose v. Himely*, (1809) 4 Cranch 241, 276; *Hudson v. Guertier* (1809), *ibid.*, 293; De Burgher, *op. cit.*, pp. 194-5; Baty & Morgan, *op. cit.*, p. 362; 2 Halleck 422-3; Manning, *Law of Nations*, p. 474.

¹⁹ See Naval War College, *International Law Topics*, 1916.

²⁰ The *Heinrich & Maria*, (1799) 4 C. Rob. 43; the *Arabella*, (1815) Fed. Cas. 501; the *Invincible*, (1814) Fed. Cas. 7054; the *Santissima Trinidad*, (1822) 7 Wheat. 283, 355; De Burgher, *op. cit.*, p. 198; Wheaton, *Maritime Capture and Prize*, pp. 262-65; 2 Halleck 426.

²¹ The *Appam*, (1916) 243 U. S. 124 (see comment on in 50 Irish L. T. 49); Risley, *op. cit.*, p. 176. For an early sporadic case to this effect, see the *Herselder*, (1799) 1 C. Rob. 114.

²² Naval War College, *International Law Topics*, 1916. For an historical account, see Manning, *Law of Nations*, Amos ed., pp. 46 *et seq.*

taken into a neutral port to await adjudication.²³ A most novel application of this doctrine was made by the Belgian Prize Court as to the German vessels seized in Antwerp at the outbreak of the war, recaptured by the Germans, and finally interned by Holland.²⁴

II

Conceivably, the question of when title to property captured as prize passes, may arise under three situations: (1) in case of a dispute between the original owner and a purchaser from the captor; (2) in case of a dispute between the original owner and a recaptor; (3) in case of a loss occurring between the time of capture and final adjudication.²⁵ The situation in (1) may in turn be divided into: (a) before sentence of condemnation; (b) after; in (2), into: (a) before condemnation; (b) after sentence of condemnation but before sale to a neutral; in (3) into: (a) where the captor is negligent or acted without justifiable cause; (b) where not negligent and where probable cause existed.

In answering the question of when title to captured property passes, four theories have been advanced. These are: (1) when the capture is complete; (2) when the *res* has been brought *infra praesidia*; (3) at the expiration of twenty-four hours after the capture; (4) after sentence of condemnation by a competent court.²⁶ A possible fifth view, to the effect that title to property captured *jure belli* does not vest until the conclusion of a peace²⁷ has never had any vogue in practice and has received very little support from the writers.

A preliminary question must be first disposed of—in whom does the interest, whatever it may be, in prize, vest? The rule is broadly stated that all captures are made primarily for the government of the captor, hence whatever interest is acquired by the capture or condemnation accrues to the sovereign.²⁸ Whatever claim the actual captor may have is necessarily

²³ Convention XIII (1907), Art. 23.

²⁴ *British Year Book of International Law*, 1921-22. See criticism of the Belgian position by Prof. Higgins, on p. 180 ff.

²⁵ Only the first two are mentioned in the books: the *Fanny*, (1793) Pet. Adm. Dec. 321; *Goss v. Withers*, (1758) 2 Burr. 683, 693 (contains elaborate discussion by Lord Mansfield); Pitt-Cobbett, *op. cit.*, p. 141; 1 Kent, Comm. 101; De Burgher, *op. cit.*, p. 189.

²⁶ Pitt-Cobbett, *op. cit.*, p. 141; G. G. Wilson, *International Law*, p. 299; T. D. Woolsey, *Introduction to Study of International Law*, 6th ed., p. 249; Atherly-Jones, *Commerce in Time of War*, pp. 607-8; Twiss, *Law of Nations in Time of War*, p. 340; the *Santa Cruz*, (1798) 1 C. Rob. 50.

²⁷ This is the view of von Martens, cited in Jacobsen's *Law of the Sea*, p. 565. Jacobsen severely criticizes this view, p. 566 n.

²⁸ The *Leda*, 1919 P. 271, 272 and at 275 per Wilson, J. dissenting; the *St. Tudno*, (1918) 3 Br. & Col. Pr. Cas. at 174; *Alexander v. Duke of Wellington*, (1831) 2 Russ. & M. 56; French Guiana, (1817) 2 Dods 151; the *Maria Françoise*, (1806) 6 C. Rob. 282, 293; the *Elsebe*, (1804) 5 C. Rob. 173; the *Manila Prize Cases*, (1902) 188 U. S. 254, 258; the *Rita*, (1898) 89 Fed. 763-68; the *Florida*, (1879) 101 U. S. 37, 42; the *Siren*, (1872) 13 Wall. 389,

based upon a municipal regulation, and is a question solely between him and his government.²⁹ It follows then that the government may order the release of captured property before adjudication; and this has been followed to the extent of releasing a vessel after final adjudication in the lower court, pending an appeal, at the expense of the captors.³⁰ This question is today not so important as it was before the Conference of Paris in 1856.

The first theory may be stated thus: when the capture is complete, title passes to the captor: What is a maritime capture? "The apprehension and detention at sea of a ship, . . . by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains or with that of becoming master of the whole or part of its cargo."³¹ The capture is regarded as complete by the striking of the colors or other evidence of submission; actual taking of possession is not deemed necessary.³² According to this theory, when the *spes recuperandi* is gone, all interest of the original owner is also.

It may be urged in support of this rule that it would accord with that prevailing as to land captures,³³ and hence there would be but one rule governing all captures made *jure belli*. But it should be noted that by the existing law of war, the private property of the enemy on land is not liable

392; the *Merrimac*, (1864) Fed. Cas. 9476; *858 Bales of Cotton*, (1863) Fed. Cases 4318 at p. 389; the *Aigburth*, (1862) Fed. Cas. 105; *Harlan v. Nassau*, (1862) Fed. Cas. 6066; the *Dos Hermanos*, (1825) 10 Wheat. 306; *Chacon v. 89 Bales*, (1821) Fed. Cas. 2568 at 393; the *Joseph Forbes*, (1813) Fed. Cas. 7583; De Burgher, *op. cit.*, pp. 186, 213-14, and authorities cited; Tiverton, *op. cit.*, p. 3; Atherly-Jones, *op. cit.*, p. 524; Wheaton's *Elements*, 5th ed. by Phillipson, p. 581; Wildman, *Institutes of International Law*, Vol. 2, p. 295 *et seq.*; *Russian Naval Prize Regulations*, 1 Russ. & Jap. Pr. Cas. 318; *Japanese Regulations*, 2 Russ. & Jap. Prize Cases, 44. But see the *Mercurius*, (1798) 1 C. Rob. 80.

²⁹ *Manila Pr. Cases*, *supra*; the *Florida*, the *Siren*, the *Dos Hermanos*, *supra*, the *Sally*, 1814, 12 U. S. 382 (construing the Prize Act of 1812).

³⁰ The *Elsebe*, *supra*, note 28, p. 486.

³¹ 3 *Bouvier's Law Dictionary*, 8th ed., p. 2723. Wheaton, *Captures*, p. 52, defines it thus: "The seizure of a vessel or goods on board the same, or both, belonging to a real or supposed enemy, or for some other cause justifiable by the law of nations, under authority from the belligerent state, with the intent to divest the actual owner of the property and to carry it into port for adjudication before some competent court." For other definitions see the *Alexander*, (1813) Fed. Cases, 164; s. c., (1814) 8 Cranch 169; the *Resolution*, (1805) 6 C. Rob. 13.

³² *Procurator v. Gessellschaft*, 1919 A. C. 291 (constructive seizure of many scattered vessels); *La Esperanza*, (1822) 1 Hagg. 91; the *Edward & Mary*, (1801) 3 C. Rob. 305; the *Rebekah*, (1799) 1 C. Rob. 227, 233; the *Mary*, (1817) 2 Wheat. 123; the *Grotius*, (1815) 9 Cranch 368; the *Alexander*, (1814) 8 Cranch 169; De Burgher, *op. cit.*, p. 186; Twiss, *op. cit.*, p. 332; Tiverton, *op. cit.*, p. 3; Hall, *International Law*, 1913 ed., p. 158; Wilson, *op. cit.*, p. 299; Wheaton's *Elements*, by Phillipson, p. 583.

³³ The *Peterhoff*, (1865) Fed. Cas. 11025, "When property is captured on land by a belligerent, the title passes and is vested so soon as the capture is complete, and the property then belongs absolutely to the sovereign."

to seizure, unless it is being used for a hostile purpose.³⁴ As to property on the sea, however, a different rule prevails despite the efforts of the United States to have it changed,³⁵ and not only is the private property of the enemy liable to seizure, but so is that of the subjects of neutral states.³⁶ In view of such a fundamental difference in situation, it can hardly be contended that the same rule should apply.³⁷

If only enemy property were involved, such a rule might not be objectionable. By the laws of war, enemy property found afloat is liable to confiscation, subject to the exceptions already noted.³⁸ This is certainly clear as to public enemy property.³⁹ And the prevailing opinion today confirms that as regards private enemy property.⁴⁰ Upon the only occasion on which the United States was called upon to make a decision on this matter during the World War, the State Department came out flat-footedly

³⁴ *Oaks v. U. S.*, (1899), 174 U. S. 778; the *Rita*, (1898), 87 Fed. 925; *Kirk v. Lynd*, (1882), 106 U. S. 315, 317; 1 Kent. 102, 110; Hall, chap. 19, sec. 7; chap. 30, sec. 4.

³⁵ 2 Halleck 126.

³⁶ *Lamar v. Browne*, (1875), 92 U. S. 187; *Richardson v. Tipton*, (1867), 65 Ky. 202; 2 Halleck 380-2, 411; *Deveraux Court of Claims*, sec. 433; J. B. Scott, "Status of Enemy Merchant Ships," this JOURNAL, Vol. II, p. 259.

³⁷ The *Peterhoff*, *supra*: "The distinction between the capture of property by a belligerent during war waged on land, and a prize seizure is as definitely marked in consequence, and effect, as if the two had no common foundation of authority," citing Kert and Halleck. Compare this with the argument of the Department of State of the United States in *Correspondence relative to Neutral Rights between the United States and Powers represented in the Congress at Paris in 1856*, p. 12, to the effect that there should be no distinction between sea and land rules.

There are today well recognized exceptions to the rule that all enemy property at sea is liable to capture. The *Amelia*, (1861) Federal Cases 277 (books intended for public library); the *Paquette Habana*, (1900), 175 U. S. 677 (coastwise fishing vessels [but this does not apply to deep-sea fishing boats, the *Berlin*, 1914 P. 264, the *Michael*, (1904), 2 Russ. & Jap. Pr. Cas. 80; the *Alexander*, *ibid.*, p. 86; the *Lesnick*, *ibid.*, p. 92]); the *Daifie*, (1800), 3 C. Rob. 139 (cartel ship); Lawrence, pp. 379-82; Westlake, pt. II, p. 133 ff.; Takahashi, *International Law in the Russian-Japanese War*, p. 783. Oppenheim, 3d ed., p. 263, cites cases where enemy vessels forced by stress of weather into the port of a belligerent were allowed to depart unmolested. For an extension of the doctrine of the *Paquette Habana*, *supra*, see the *Manila Pr. Cas.*, (1902), pp. 254, 278-9. See also J. B. Scott in this JOURNAL, Vol. X, p. 105.

The exemptions generally named are vessels engaged in scientific work, cartel, and hospital ships.

³⁸ Note 37, *supra*.

³⁹ Wheaton's *Elements* by Phillipson, p. 581; Sir Frederick Smith, *International Law*, 5 ed., p. 419; J. B. Scott in this JOURNAL, Vol. X, p. 164; Grotius Society Publications, Vol. 4, p. xxxiv ff.; Oppenheim, 3d ed., p. 263.

⁴⁰ *Goss v. Withers*, (1758), 2 Burrows 683; the *Buena Ventura*, (1898) 87 Fed. 927; *White v. Red Chief*, (1870), Fed. Cas. 17556; the *Sclly Magee*, (1866) Fed. Cas. 18216; the *Elle Warley*, (1862) Fed. Cas. 4371; the *Prince Leopold*, (1861) Fed. Cas. 11428; the *Tropic Wind*, (1861) Fed. Cas. 14186; the *Mary Ford*, (1793), 3 Dallas 188-198; 2 Halleck 203n; Lawrence, p. 398; Lee, *Capture in War*, 2d ed., p. 73; Twiss, p. 332; J. B. Scott, this JOURNAL, Vol. X, p. 105; *Memorandum on Status of Armed Merchant Vessels*, March 2E, 1916, in Naval War College, *International Law Topics*, 1916, p. 104.

for such a rule.⁴¹ Its basis is found undoubtedly in the fact that even if the property were brought in for adjudication, as property of the original owner, it would of a certainty be condemned. Hence it was felt that as for all practical purposes the owner had lost his interest in the *res* captured, the title should be regarded as having passed when the capture was effected.

Assuming for the moment that such a rule is desirable in the case of enemy property, it by no means follows that it should be applied when the interest of a subject of a neutral state is involved. It must be taken as axiomatic that unless the property captured belonged to an enemy, or,⁴² if to a neutral, were engaged in a transaction which by the law of nations rendered it liable to seizure, no right of property can pass to the captor. As already pointed out,⁴³ the right to capture arises out of the fact of belligerency, its basis being the right to harass the enemy. But unless the property seized were involved in some transaction beneficial to the enemy, a capture of it would be outside the scope of the right conferred by belligerency. It must be evident then that, if the *res* belongs to a neutral, and is engaged in no unneutral service, a captor can acquire no right of property; at the most, if there existed justifiable cause for his action he will have a valid defense against being regarded as a trespasser.⁴⁴

So at the outset we are met by a distinction, impossible to avoid, unless indeed we are to say that the mere fact of a capture by a belligerent, being the act of a sovereign state, cannot be questioned. Such a retort avoids the issue, for our purpose is not to discover what a belligerent has a power to do, for that is limited only by his strength, but to ascertain what he has a right to do. And no nation can with impunity disregard those rules which have been laid down by the common consent of mankind, and which are founded upon concepts calculated to attain international justice.

But this rule is attended also with serious practical objections. To say that title passes means that, for all purposes whatsoever, the property captured is now that of the captor. He may take it into his own ports, he may take it into a neutral port,⁴⁵ he may destroy it; if recaptured, it becomes prize of the recaptor, who would also have all those rights and powers which are involved in the term title. The recaptor is likely to be a co-

⁴¹ *Matter of the Internment of the German Prize Ship Farn*, 2 Diplo. Corres. 139-141: "In the opinion of this government an enemy vessel which has been captured by a belligerent cruiser becomes, as between the two governments, the property of the captor without the intervention of a prize court. If no prize court is available, this government does not understand that it is the duty of the captor to release his prize, ~~or to refuse~~ to impress him into service. On the contrary, the captor would be remiss in his duty to his government and to the efficiency of its belligerent operations if he released an enemy vessel because he could not take him in for adjudication."

⁴² *The Resolution*, (1781), 2 Dallas, 2.

⁴³ *Supra*, p. 484.

⁴⁴ The nature of the right acquired by the capture is discussed, *infra*, part III.

⁴⁵ For limitations upon this, see *supra*, notes 21, 22, 23.

national of the original owner, but according to this theory, that would avail the latter nothing, though on principles of natural justice, it would seem that the original owner should then be revested with his prior interest. A more extreme case would arise were the former proprietor himself to effect the recapture. Unless his sovereign granted him, as a matter of grace, an interest in what he has captured from the enemy, he would still be deprived of all his property.

Of greater moment, however, are the questions raised in the determination of the enemy or neutral character of the property involved.⁴⁶ Whether title has passed between shipper and consignee, between seller and purchaser; whether the doctrine of ultimate enemy destination or continuous voyage is applicable in the given instance, are not matters to be lightly decided. Certainly their solution should not be entrusted to the snap judgment of a maritime captor, unlearned in the law, and actuated by a zealous patriotism that is most apt to brush over what he might be pleased to term "technicalities" of law. Yet upon the correct answer to these difficulties will depend the enemy or neutral character of the property, a difference, not of degree, but of kind. Far better indeed were it to have a rule which would avoid as much as possible those national animosities which must inevitably arise from the confiscation of neutral property on any ground but that of certainty.

Nor is this all. Prize law and procedure prides itself upon its simplicity. In so far as is possible, it would seem desirable to have as uniform a rule as can be attained, having in mind the two great rights concerned. It is from these viewpoints of policy and technique that exception is taken to the prevailing view that title to private enemy property, seized as prize, passes when the capture is complete.

At the outset, it should be stated that an exception must be made in the case of public enemy property. That seems to fall naturally into a distinct and unique category. But it is submitted that apart from such property, all other seizures should be governed by the same rule, if that is possible without derogation of the rights of either the belligerent or the neutral.⁴⁷

Assuming the question to arise between the former owner and a purchaser from the captor, it is clear, that according to the theory that title passes when the capture is complete, such a purchaser would acquire an indefeasible title. The injustice of that is at once apparent. If it were ultimately decided that the property had no connection with the enemy, the owner is remitted to a claim for damages against the captor, or in modern times, against the sovereign of the captor. The latter may or may not allow suit to be brought against it, and if not, resort must be had to diplomatic channels—the whole a costly, tedious, and unsatisfactory process.

Nor would such a purchaser be in an altogether satisfactory position. It

⁴⁶ See note 91, *infra*.

⁴⁷ This position is amplified, *infra*, p. 495, in the discussion of the modern law.

is not to be expected that the neutral owner will tamely submit to being thus mulcted of his property, and he would contest the right of the purchaser at every opportunity.

Needless to say, today such a sale has no international effect.⁴⁸ Not a case has been found arising since the beginning of the nineteenth century, where it has been held that a sale before sentence of condemnation would be binding as against the former owner.⁴⁹

As between the original proprietor and a recaptor⁵⁰ the matter is further complicated by the *jus postliminii*. It has already been pointed out that under this first rule, the original owner is completely barred the moment capture is complete. But that result was so harsh that "many arbitrary lines were drawn, partly from a policy to prevent too easy disposition of the property to neutrals, and partly from equity to extend the *jus postliminii* in favor of the original owner."⁵¹ Leaving aside for the moment the *infra praesidia* and *per noctation* rules, it is evident that consistently with the theory of immediate transfer of title, we must either deny *in toto* the *jus postliminii*, or further qualify it by saying that the title does pass, subject to being revested in the former owner, if a recapture is effected within a certain fixed period. Either form of the dilemma is unfortunate, the one as being unduly severe, in that it overlooks the basis of prize law as being a compromise between neutral and belligerent rights; the other, in that any period fixed is necessarily arbitrary,⁵² and that it adds another complication to a situation where the *desideratum* is simplicity.

There remains the third situation to consider, where a loss occurs between the capture and date of final adjudication. Generally speaking, risk attends title. It would then follow that the burden of any loss would fall upon the captors, no matter how carefully they dealt with the property. But it is a paradox to impose a liability for the exercise of a right. The right of the belligerent to capture cannot be questioned, and if he acted with

⁴⁸ See authorities cited in notes 17, 18, 19, *supra*. The *Henry*, (1810) Edw. 192, 195. But see *Williams v. Armroyd*, (1813), 7 Cranch 423.

⁴⁹ The *Flad Oyen*, (1799), 1 C. Rob. 135, 139, per Sir William Scott: "I apprehend that by the general practice of the law of nations, a sentence of condemnation is at present generally deemed necessary, and that a neutral purchaser in Europe during war, does look to the legal sentence of condemnation as one of the title deeds of the ship, if he buys a prize vessel. I believe there is no instance in which a man having purchased a prize vessel of a belligerent, has thought himself quite secure in making the purchase, merely because the ship had been in the enemy's possession twenty-four hours, or carried *infra praesidia*—the contrary has been more frequently held. . . ."

Compare this with the statement of the same noted judge in the *Santa Cruz*, (1798), 1 C. Rob. 50, 59, to the effect that "the mere unity of principle forms no uniform rule to regulate the general practice."

⁵⁰ Cases of recapture are cases of prize, to be proceeded in as such—the *Schooner Adeline*, (1815), 9 Cranch 244, 284; 1 Halleck 514.

⁵¹ De Burgher, *op. cit.*, pp. 189-90.

⁵² This is discussed more at length, *infra*, p. 493.

care and reasonable justification, he should incur no liability, irrespective of what happens to the property.⁵³ He is a rightful possessor, and as such should not be liable for casualties.

Clearly then, this first rule will not suffice. Its operation is attended with injustice to the neutral⁵⁴ (in the first and second situations), and to the belligerent (in the third situation). Nor does it provide a direct, practicable working rule. True enough, international law is not international ethics, and there must be a yielding to the practical exigencies of the case. But, if it is to have any enduring authority, international law must be based upon the fundamental principles of human rights, and must give effect to the common welfare of nations. And nowhere are these requirements more needed than in that part of the law of nations which deals with rights arising out of war.

The second theory may be thus stated: "By a capture, a ship does not become the property of the captor until it is carried into a port or fleet of the enemy's country, whereby the Roman maxim of bringing the property *infra praesidia* is applied."⁵⁵ This rule is also based upon the notion that what is necessary to transfer the ownership to the captor is that the latter acquire a firm possession. It is then an extension of the first rule, except that, instead of regarding the *deductio* as evidence of complete possession, it is insisted that the captor display sufficient strength and power to bring the captured property safely within his own lines.

Fundamentally, it is the same as the first rule, and what has been said about the latter is applicable here. This exception must be noted, however: the rule of *deductio infra praesidia* is more fair to the owner of the seized property, for it extends the period in which the *jus postliminii* may be exercised. For, as it is the essence of this rule that the title does not pass until the *res* is brought *infra praesidia*, it follows that a recapture at any time prior to that will revert the former owner. The conditions attached to the exercise of the *jus postliminii* will be taken up in connection with the *per noctation* or twenty-four hour rule.

The twenty-four hour rule grew out of a desire to limit the period in which the *jus postliminii* could be exercised.⁵⁶ As Grotius expresses it: "But by

⁵³ This is illustrated by the British practice of refusing compensation for neutral goods lost through the destruction of an enemy vessel captured at sea. The American practice is contrary, but the English rule is the logical outcome of the doctrine which transfers title to enemy private property immediately upon the capture. See Oppenheim, *op. cit.*, 3d ed., p. 263.

⁵⁴ See criticism in Jacobsen, *op. cit.*, p. 566n.

⁵⁵ Jacobsen, *op. cit.*, p. 564. Grotius, Bk. III, Chap. 6, Sec. 3 (Morice's translation, p. 97) states the rule thus: "Ships and other things are said to be taken when they are brought in the enemy's harbor, or the place where their navy rides, for then there is no hope of recovery." The *Ceylon*, (1811), 1 Dods. 105, 116.

⁵⁶ For a full account of the nature and history of *jus postliminii*, see Kent's *Commentaries*, 1st ed., p. 109 ff.

a later law of nations, particularly the European, they are accounted lost, if they continue twenty-four hours in the enemy's possession."⁵⁷ This rule was borrowed from the laws of the Lombards, which limited to twenty-four hours the time in which the hunter who had wounded a beast might recover it from one who had obtained possession of it.⁵⁸ It was first published by an edict of France in 1584,⁵⁹ and became the general rule for the greater number of civilized nations.⁶⁰

This rule has less reason to support it than either that have been discussed. Possession of the captor is regarded as complete when the *spes recuperandi* is gone. It is certainly intelligent to hold, as does the first rule, that the capture is effective when the *deditio* is complete; and it is at least reasonable to hold, as does the second rule, that bringing the *res infra praesidia* is conclusive evidence of effective possession. But this rule is neither intelligent nor reasonable. It is contrary to fact to say that, in all circumstances, hope of recovery is completely gone at the expiration of twenty-four hours. And if the rule is based upon the obliteration of the *spes recuperandi*, and, as a matter of fact, that *spes* is existent at the expiration of twenty-four hours, it is unreasonable and unjust to debar the former owner from the opportunity of revesting himself of his property.⁶¹ It is impossible, in the nature of things, to set a certain period and hope thus to attain justice, or even convenience.

This rule led to all sorts of regulations as to recapture. It was generally held that the recapture revested the former owner with all of his former interest,⁶² usually on payment of military salvage, if the property were recaptured from the enemy,⁶³ but if it were neutral property, generally, no salvage was awarded,⁶⁴ though it might be under exceptional circumstances.⁶⁵

⁵⁷ Bk. III, Chap. 6, Sec. 3, p. 97, of Morice's translation.

⁵⁸ Grotius, *supra*; Twiss, *op. cit.*, p. 343.

⁵⁹ Wilson, *op. cit.*, p. 299.

⁶⁰ See the opinion of the Doctors upon Matters of Prize Law (1568) in Marsden, *Law and Custom of the Sea*, Vol. I, p. 181. The *Ceylon*, (1811), 1 Dods. 105-116 (points out the widespread adoption of this rule). See also the *Betsey*, (1787), 1 C. Rob. 93, 100; the *Santa Cruz*, (1798); 1 C. Rob. 50, 73.

⁶¹ See Jacobsen, *op. cit.*, pp. 566n., 587.

⁶² Lawrence, *op. cit.*, p. 398; De Burgher, *op. cit.*, pp. 189-90; Woodward v. Lacking, (1801), 3 Esp. 286-287 (repurchase by co-national of former owner does not bar the latter).

⁶³ The *Spanjos*, (1919), 3 Br. & Col. Pr. Cas. 470 (captor driven off); the *Sir Peter*, (1815), 2 Dods. 73 (donation); the *Wight*, (1804), 5 C. Rob. 315; the *Fortuna*, (1801), 4 C. Rob. 78; the *Apollo*, (1801), 3 C. Rob. 308; Pitt-Cobbett, *op. cit.*, p. 143; Wilson, *op. cit.*, p. 299.

⁶⁴ The *Alexander*, (1815), 2 Dods. 37; the *Carlotta*, (1803), 5 C. Rob. 54; the *War On-t-in*, (1799), 2 C. Rob. 299.

⁶⁵ The *Pontoporos*, (1916) P. 100 (recapture from German); the *San Francisco*, (1810), Edw. 279 (treaty between England and Spain); the *Sanson*, (1807), 6 C. Rob. 410 (because of the French practice of indiscriminate condemnation); the *Eleonore Catharina*, (1802), 4 C. Rob. 156, acc. See the interesting case of the *Henry*, (1810), Edw. 192 (salvage awarded claimant who had purchased vessel at sea for the purpose of restoring it to the owner).

The reason for the distinction is this: in the former case, as the enemy would most certainly condemn the property, a recapture effected a salving of the property, whereas in the latter case, the presumption was that no belligerent would condemn a neutral, hence as the property was bound to be released anyhow, no service was rendered the owner by the recapture. As to the property of an ally recaptured from the common enemy, the principle of reciprocity was adopted.⁶⁶

The basis of this third rule is, then, the same as that of the first and second—firm possession. All that has been said about those rules applies *a fortiori* to this one. There is still lacking that appeal to a judicial tribunal, so desirable in the settlement of international questions.

We turn now to a consideration of the fourth rule suggested, namely, that title passes to the captor, so as to completely bar the original owner, only upon the sentence of condemnation passed by a competent court. This rule is supported by the overwhelming weight of authority, both of judicial decisions⁶⁷ and text writers,⁶⁸ and is amply justified on principle.

Before entering into a discussion of the principles underlying this rule, attention should be called to the fact that in the peace treaties concluded between the Allied Powers and the Central Powers, at the close of the recent World War, it was stipulated that while the Central Powers are to accept as valid and binding all decrees of the prize courts of the Allied Powers, the latter reserve the right to examine all decisions of the courts of the Central Powers.⁶⁹ Except possibly on the ground that such tribunals in their de-

Where prize abandoned, or possession lost, subsequent captor prevails. The *Diligentia*, (1814), 1 Dods. 404; Wheaton's *Elements* by Phillipson, p. 601.

⁶⁶ The *Santa Cruz*, (1798), 1 C. Rob. 50, 61, 78; Pitt-Cobbett, *op. cit.*, p. 143.

⁶⁷ The *Sudmark*, 1918 A. C. 475; the *Odessa*, 1916, 1 A. C. 145, 153; the *Ionian Ships*, (1855) Spinks 193; the *Neustra De Los Dolores*, (1809) Edw. 60, 62; the *Falcon*, (1805), 6 C. Rob. 194, 200; the *Nostra de Concieres*, (1804) 5 C. Rob. 294; the *Henrick & Maria*, (1799), 4 C. Rob. 43, 55; the *Flad Oyen*, (1799), 1 C. Rob. 135, 139; *La Caux v. Eden*, (1781) Douglas 594n. (this note contains a most instructive account of the early law on this subject); the *St. Joseph*, *Life of Sir Leoline Jenkins*, Vol. 2, p. 776; the *Peterhoff*, (1865) Fed. Cas. 11025; *Commodore Stewart's Case*, (1864), 4 Wall. 634, 640; the *Elle Warley*, (1862) Fed. Cas. 4371, (1838) 3 Opin. of the Atty. Genl. 377; *Sheaf v. Hogsheads*, (1800) Fed. Cas. 12730; the *Resolution*, (1781), 2 Dall. 1, 5; the *Knight Commander*, (1904), 1 Russ. & Jap. Pr. Cas. p. 75.

The decree relates back to the time of seizure. *Anderson v. Marten*, 1908 A. C. 334; the *Odessa*, *supra*; Wheaton's *Elements* by Phillipson, p. 581.

⁶⁸ De Burgher, *op. cit.*, p. 185; Hall, *op. cit.*, 7 ed., p. 807; Jacobsen, *op. cit.*, p. 564; Kent, *Commentaries on International Law*, Abdy's ed., p. 248; Kent, *Commentaries*, p. 102; Manning, *op. cit.*, p. 476; Pitt-Cobbett, *op. cit.*, p. 141; Smith, *op. cit.*, 5 ed., p. 425; Tiverton, *op. cit.*, p. 3; Upton, *Maritime Warfare and Prize*, 3 ed., p. 237; Wheaton, *Captures*, p. 274; Wheaton, *Elements*, p. 9; Woolsey, *op. cit.*, p. 252; J. B. Scott in this JOURNAL, Vol. X, p. 105; C. N. Gregory in this JOURNAL, Vol. II, p. 315. See also *Neutrality Rules of Brazil*, published in Naval War College, *International Law Topics*, 1916, p. 13.

⁶⁹ Austrian Treaty, Art. 378; Bulgarian Treaty, Art. 296; German Treaty, Art. 440; Hungarian Treaty, Art. 361; Turkish Treaty, Art. 418. Certainly this is not to be assimilated to the case of the Confederate prize courts. See the *Lilla*, (1862) Fed. Cas. 8348.

cisions had flagrantly disregarded the law of nations, it seems difficult to justify those provisions.

We turn now to an analysis of this last mentioned rule. Mention has already been made of the prevailing rule to the effect that as to enemy property captured as prize, the title passes at once.⁷⁰ So on the authorities today, the situation stands thus: title to enemy property passes once the capture is complete; title to neutral property does not pass until the sentence of a competent court of prize, condemning the *res*.

This latter proposition rests upon absolutely unanswerable grounds. Until there is proof that the neutral has rendered himself liable to penalties, his goods are *prima facie* free from seizure. If they are seized, before the captor inflicts a penalty of any sort, he must show that the acts of the neutral have been such as to give him a right to so do. This can be done only through the process of a judicial tribunal, and no right of property can pass to the captor until the court has finally adjudicated upon the matter.

The suggestion is here made that while a natural distinction exists between public enemy property, and all other, there is not the same reason for a different rule as to enemy and neutral private property. Two reasons present themselves—one, the necessity for simplicity in prize law, second, the practical difficulties involved (see *supra*, p. 489).

As to the first reason, it may be said that nothing is gained by the above suggestion, for after adopting it there would still be two rules. But the situation must be viewed as a whole. Factually we find this: the smallest number of cases concern public enemy vessels; the next group is composed of private enemy vessels, while the largest is made up of cases involving the property of neutrals.

If there is any merit at all in the argument that there should be a minimum of complication in the law of prize, it would seem desirable to have one rule governing the cases most frequently arising, bearing in mind constantly the dual phase of prize law. It has already been shown that so far as neutral property is concerned, both reason and authority are opposed to the view that title should pass upon the capture. At the same time, it has been conceded that as regards public enemy property there is no objection to such a rule; indeed, that would appear to be the natural result.

That leaves then the second group. If it is possible to have this class governed by the same rule as that of the third, there will be, for all practical purposes, but the one rule, for the question of the title of public enemy vessels is never before the courts.⁷¹

It is submitted that there is no sound basis for a ~~different~~ rule for enemy

⁷⁰ *Supra*, p. 488. See the *Leucade*, (1855), 2 Spinks 228; 231. De Burgher, *op. cit.*, pp. 188-9.

⁷¹ J. B. Scott, in this JOURNAL, Vol. X, p. 104: "Public armed vessels of the enemy upon the high seas are subject to capture, and title passes from government to government, without the need for a decision of the prize court."

and neutral private vessels. The difficulty has arisen because of the confusion of this question of title with two other questions—destruction and conversion.

Whether or not the captor has the right to destroy what he has captured, has long been a moot point. From what has been said about public enemy vessels, it follows that such may be destroyed at the will of the captor. As to private enemy vessels, by the prevailing view today, such a right exists⁷² also though its exercise is rather restricted.⁷³

As to neutral vessels, however, there is more difference of opinion.⁷⁴ To deny such a right, in the case of a neutral, is consistent with the rule that title passes only upon a decree of condemnation of the prize court. But even if the same rule prevailed as to enemy property, it would not be necessary to deny that right to the captor. Destruction is a right arising out of belligerency, and is not dependent upon the captor having title.

As to conversion it is not altogether clear that that right does exist. It has been recently doubted by a most learned commentator;⁷⁵ and the British Government in the matter of the *Farn* took a somewhat similar position.⁷⁶

But even if the existence of the right be granted, it is not fatal to the proposition that title to enemy property should not pass until a sentence of condemnation. If there be a belligerent right to destroy, irrespective of where title is, *a fortiori* there should be the right to utilize.

If what has been said is sound, it appears then that this rule may be adopted for enemy private vessels, without derogating in the slightest from the rights of either of the parties concerned. Such a doctrine would operate

⁷² The *Leucade*, (1855) Spinks 217; the *Felicity*, (1819), 2 Dods. 381, 385; Atherly-Jones, *op. cit.*, p. 589; 2 Garner, *International Law and the World War*, p. 362 and authorities cited; Bentwich, *op. cit.*, p. 93; Lawrence, *op. cit.*, 4 ed., p. 483; Smith, *op. cit.*, 5 ed., p. 420; *Memorandum on Status of Armed Merchant Vessels*, Naval War College, *International Law Topics*, 1916, p. 105. In Oppenheim, 3rd ed., Vol. 2, p. 620, will be found a good discussion of this problem. See also the German note on the sinking of the *Wm. P. Frye* in 1 *Diplo. Corres.* 87. For a contrary view see Woolsey, *op. cit.*, sec. 148.

⁷³ See authorities cited, *supra*, note 72.

⁷⁴ *Memorandum on Status of Armed Merchant Vessels*, Naval War College, *International Law Topics*, 1916, p. 105: "In case of neutral merchantmen, the right to sink in any circumstances, is doubtful;" Wheaton's *Elements* by Phillipson, p. 799, to the effect that if the captor cannot bring the captured property in, he should release it, even if there be a doubt whether it is neutral or enemy. See Smith, *op. cit.*, 5 ed., p. 424, and Oppenheim, 3 ed., p. 273.

⁷⁵ Oppenheim, 2d ed., p. 262, note, in which he speaks of the *Ceylon*, (1811), and the *Georgianna*, (1814), 1 Dods. 105, 397, as not being decisive on the point. See the *Nostra Signora de Rosaria*, (1801), 3 C. Rob. 10.

⁷⁶ 2 *Diplo. Corres.* 139-140: "Whatever the previous status of the vessel . . . it would be necessary, before the vessel could be treated by a neutral power . . . as a German fleet auxiliary, instead of as a prize . . . that there should have been a finding of condemnation of her on some other ground by a competent court." The American answer was a flat denial of this contention.

as a check upon overzealous naval commanders, and tend to reduce international friction. It is highly desirable that the belligerent be forced to justify his conduct before the world. The records of his court are open to all. Yet under the prevailing view, prize court proceedings as to enemy property are a mere formality, and might as well be dispensed with. If the distinction is to be based upon the enemy character of the property, why insist upon court proceedings for the private property and not the public? So far as the belligerent is concerned, he is just as much injured by neutral property engaged in unneutral service, as he is by undoubted enemy property. In fact more so, for the former is more difficult to detect. And yet under the prevailing rule, greater leniency is shown the neutral property. Far better would it be to have but one rule, applicable to all the cases that arise in court, thus forcing a great class of international questions into judicial tribunals for settlement, and providing a uniform rule for all situations.

It is submitted that the view herein advanced, though as yet without much sanction from the books, is sound on principle. Nor is it altogether without support. Two recent works—Phillipson's edition of Sir Frederick Smith's treatise⁷⁷ and the last edition of Oppenheim⁷⁸ contain expressions favorable to this viewpoint, which may be taken, perhaps, as symptoms of the present-day tendency.

The above principles are all applicable in the case of violations of neutrality. The authorities are unanimous to the effect that, as between the belligerents, a seizure in neutral territorial waters is valid, and that only the power whose neutrality has been violated can maintain a claim of territory in the prize court.⁷⁹ Unless that sovereign can show special damages, no damages will be awarded if the *res* has been destroyed.⁸⁰ Where there has been a violation of neutrality, and the courts of the neutral country obtain jurisdiction over the *res*, they may interfere to restore the property.⁸¹ The neutral court will prevail in case of a conflict of jurisdic-

⁷⁷ P. 419. "The modern view, however, tends to regard the captor's right as one of possession only, which may be transferred into a property right by condemnation of the prize court."

⁷⁸ P. 262. "Capture of private enemy property does not vest the property finally in the hands of the belligerent whose forces effected the capture. The prize has to be brought before a prize court, which by confirming the capture through adjudication of the prize, makes the appropriation by the capturing belligerent final."

⁷⁹ The *Dusseldorf*, (1920) A. C. 1034, 1037; the *Purissima Conception*, (1805), 6 C. Rob. 45, 47; the *Vrouw Anna Catharina*, (1803), 5 C. Rob. 15; the *Twee Gebroeders*, (1800), 3 C. Rob. 162; the *Anne*, (1818), 3 *ibid.*, 435, 447; the *Adela*, (1867), 6 Wall. 266; the *Sir Wm. Pere*, (1866), 5 Wall. 517, 535; the *Lilla*, (1862) Fed. Cas. 8348; *Twiss, op. cit.*, pp. 488, 494.

⁸⁰ The *Valeria*, 1921, 1 A. C. 477; the *Dusseldorf*, 1919, P. 240 (no damages nor costs, vessel released); the *Anna* (1805) 5 C. Rob. 373 (damages awarded).

⁸¹ The *Appam*, (1916), 243 U. S. 124; the *Marianna Flora*, (1826), 11 Wheat. 1, 42; the *Fanny*, (1824), 9 Wheat. 658, 668; *La Amistad de Rues*, (1820), 5 Wheat. 385; *L'Invincible*, (1816), 1 Wheat. 238, 258; the *Alerta*, (1815), 9 Cranch 359, 364; the *Betsey*, (1794), 3 Dallas 6; *Hollingsworth v. The Betsey*, (1793) Pet. Adm. Dec. 330; the *Juando*, (1818) Fed. Cas.

tion with a prize court of the captor's country.⁸² But unless its neutrality is involved, the neutral power should make no inquiry.⁸³

Having seen that the rule of the transfer of title being dependent upon the decree of a competent prize court, is both sound in principle and sanctioned by authority, we may now test its actual working by reference to the three situations under which, as has been suggested, the question could arise.

As between the original owner and a purchaser from the captor, if the sale is made prior to the decree, the buyer does not acquire an internationally valid title. That must follow necessarily from the statement of the rule. But, if before the title thus acquired is impeached, it is confirmed by the decree of a competent court, it is considered as "operating retrospectively, so as to rehabilitate the former title."⁸⁴

The purchaser after sentence by a competent court acquires an unimpeachable title, valid the world over. He may even take the *res* into the country of the former owner with safety, for the instrument of condemnation shows that the capture has been subjected to a judicial investigation, conducted in accordance with the law of nations. Hence, the former owner, be he enemy or neutral, has no just cause for complaint.

If there be involved the former proprietor and a recaptor, the interests of both are adequately cared for. Should the recapture take place before sentence of condemnation, the recaptor is not taking enemy property. If the original captor had seized property of his enemy, the recaptor would be then acquiring possession of property of a friend. Under that circumstance, he would have no claim to ought but military salvage, for he should certainly not claim as prize the property of one who is not an enemy. If the original owner were a neutral to the first captor, and there existed no just cause for confiscation, the recaptor would again get possession of the property of a friend. And assuming that all the nations concerned will act in accordance with international law, the recaptor will have no claim for military salvage, for he has not performed a service to the original owner.

As for the original owner, if he were an enemy to the first captor, he has no cause for complaint when his property is seized. But, by the law of war his property was liable to capture only by his enemy. If some one not his enemy gets possession, except under a decree of a competent prize court, he has no valid claim to set up against the original owner. The latter, however, has been rendered a service, for which he should pay.

If the former proprietor be a neutral in relation to the first captor, and

7558; the *Flad Oyen*, (1799), 1 C. Rob. 135, 144; Kent, *Commentaries*, Vol. I, p. 126; Wheaton, *Captures*, pp. 252, 266; 1 Halleck 188.

⁸² Twiss, *op. cit.*, p. 498.

⁸³ The *Mary Lord*, (1796), 3 Dall. at 192.

⁸⁴ The *Falcon*, (1805), 6 C. Rob. 194, 200. See also the authorities cited at the end of note 67, *supra*.

assuming the latter will act in accordance with international law, there being no cause for condemnation, a recapture is of no particular benefit to the owner, and hence he need pay no salvage. Nor should he lose his property, no matter who has the possession.

If the sentence of a competent court intervenes prior to the recapture, the former owner is completely barred. It must then be regarded as the property of the one holding under the court decree, and will be governed as above outlined.

The third situation—where a loss occurs between the time of capture, either through accident or because of negligence or misconduct of the captor, and final adjudication, raises questions of more difficulty. Closely allied to this phase of the matter, is the problem of apportioning the burden, when the captor has acted with or without justifiable cause.

First, when the captor has acted with justifiable cause in making the seizure. Seizure by a belligerent is one of the risks the neutral trader must encounter during a war.⁸⁵ He is not being punished, even if he is caught while engaged in unneutral activity. But a nation at war may go to great lengths in harassing its enemy, and a vigilant attitude toward neutrals is nearly always an effective means.

There is justifiable cause when the ship or cargo, presents, in and of itself, reasonable ground for a belief that it would constitute lawful prize.⁸⁶ In the leading case of the *Ostsee*,⁸⁷ the Judicial Committee of the Privy Council, in defining probable cause, adopted the definition laid down by Justice (then Judge) Story:⁸⁸ "If therefore there be a reasonable suspicion of its traffic, or a reasonable doubt as to the proprietary interest, the national character, or the legality of the conduct of the parties, it is proper to submit the cause for adjudication before the proper prize tribunal, and the captors will be justified, although the court should acquit without the formality of ordering further proof." In other words, so long as there existed

⁸⁵ The *Leonora*, 1919 A. C. 985. "The office of a court of prize is to provide a formal and regular sanction for the law of nations applicable to maritime warfare, both between belligerent and belligerent, and between belligerent and neutral. . . . The jurisdiction of a court of prize is at least as essential in the neutrals' interest, as in the interest of the belligerent, and if the court is to have power to release in the interest of the one, it must also have inherent power to condemn in justice to the other. Capture and condemnation are the prescriptive and established modes by which the law of nations as applicable to maritime warfare is enforced." The *Stigslad*, 1919 A. C. 279 (damages for detention refused, though freight allowed). For a complete review of this right of the belligerent and corresponding risk upon the neutral, see the note of the Secretary of State of the United States to the British Foreign Office, of Oct. 21, 1915 (3 Diplo. Corres. pp. 25 et seq.). This contains also a vigorous protest against the practices of Great Britain as to search and seizure. "Neglected Fundamentals of Prize Law," T. J. Baty, in 60 *Yale Law Journal* contains a résumé of the latter practice.

⁸⁶ The *Bernice*, 1921, 1 A. C. 464; The *George*, (1815), Fed. Cas. 5328.

⁸⁷ (1855), 2 Spinks 170. See the rule of this case, *infra*, note 90.

⁸⁸ The *George*, (1815), 1 Mason 26, 27. See also the *Edna*, 1921, 1 A. C. 735, 752.

justifiable cause, the captors will not be liable for any damages, costs or expenses.⁸⁹

But if the seizure be made without justifiable cause, the captor must pay costs and damages.⁹⁰ Hard cases arise where the captor, though acting *bona fide*, makes a mistake as a result of which a seizure or loss occurs.⁹¹ At the time of the capture, the captor need not assign any reason for his action; he acts at his peril.⁹² He is, however, allowed to rely at the trial,

⁸⁹ The *Dusseldorf*, 1920 A. C. 1034, 1041: "Though, as now appears, the captors had no legal right to possession, in placing the cargo and ship in custody of the marshal, they acted in discharge of an obligation of a very binding character from the observance of which it would be most inexpedient in any way to deter persons in their position." The *Juando*, (1818) Fed. Cas. 7558 at p. 1189: "A seizure as prize is no trespass, though it may be wrongful. The authority and intention with which it is done deprives the act of the character that would otherwise be impressed upon it. The tort is merged in the capture as prize." The *Buena Ventura*, (1899), 175 U. S. 384; the *Tropic Wind*, (1861) Fed. Cas. 14186.

⁹⁰ The *Ostsee*, *supra*, p. 171. The same rule existed in France, *ibid.*, p. 172. The *Bernice*, 1921, 1 A. C. 458 (damages awarded for being ordered to British port through mistake as to Order in Council) and authorities cited; the *Acteon*, (1815), 2 Dods. 48 (full compensation awarded for destruction of property, it being found that in no wise had the owner contributed to the necessity of capturing and destroying his property. The captor had interpreted a license as invalid when it was really valid). The *Nemesis*, (1808) Edw. 50 (unjustifiable capture, costs and damages awarded).

The *Edna*, 1921, 1 A. C. 735, 749, thus states the doctrine of the *Ostsee*: "The ground given for seizing her did not in fact exist, and it was held that the actual captor's honest belief that it did, could not by itself operate as a probable cause for seizure."

In the *Luna*, Edw. 190, decided in 1810, a different rule was laid down and the captors who had misinterpreted an Order in Council, were given expenses. Five years later came the decision in the *Acteon*, *supra*, decided with no reference to the *Luna* whatsoever. The *Sigurt*, 1917 P. 250, involved the same principle. The court, however, followed the *Luna*, refusing damages and costs on the ground that the legal question at issue was important and not easy to decide. This result stresses unduly the belligerent right. Reason and justice would appear to favor the result of the *Acteon*. Such a conclusion moreover, would harmonize with the general principle that mistake of law affords no defense. In the *Edna*, *supra*, the court refused profits earned. In view of the rule that title remains in the original owner until sentence of condemnation it is difficult to justify such a result. This would appear to carry belligerent rights to the extreme limit. For a similar case see the *Dirigo*, 1919 P. 204 (interest refused, though the Crown had the use of the proceeds of the property ultimately restored); the *Falk*, 1921, 1 A. C. 787, and authorities cited, *acc.* For American decisions in accord see the *Ariadne*, (1812) Fisher's Pr. Cas. 25, 61; *British Consul v. Thompson*, (1799) Fed. Cas. 1899; *Gibbs v. Two Friends*, (1781) Fed. Cas. 5386; the *Paquette Habana*, (1899), 175 U. S. 677. As to wrongful seizures by public ships (as distinguished from privateers) see the *Louisa Agnes*, (1862) Fed. Cas. 8531 at p. 947.

⁹¹ The *Leucade*, (1855), 2 Spinks 228, (vessel restored, but without costs or damages because the validity of the seizure depended upon the nice construction of public documents). See also the *Acteon*, note 90, *supra*, where it is said (p. 52) the claimant will get simple restitution where he has in some degree contributed to the loss.

⁹² The *Marie Schroeder*, (1800), 3 C. Rob. 147, 152; the *Lively*, (1812) Fed. Cas. 8403; Story, *Prize Court Practice*, Pratt's ed., p. 75.

on facts unknown to him at the time of the capture,⁹³ the effect of which is to withdraw a strong restraint upon the too zealous activities of naval commanders.

Thus while title remains in the original owner and though his property be ultimately released, yet if there existed justifiable cause for the seizure, not only is the owner refused costs and damages for the injuries he suffered because of the detention, but he may be compelled, in addition, to pay the expenses of the captor incurred in bringing the seized property into port.⁹⁴ The cases are numerous where expenses have been allowed the captors, which would rather indicate that it is not a very difficult task to convince the prize court sitting in the capturing country that there existed probable cause for the seizure. Cases where the owner has been allowed damages for seizure on the ground of no justifiable cause⁹⁵ are correspondingly few.

The justification for this right of the belligerent must be found in the fact of belligerency. To deprive a nation at war of the right to seize and

⁹³ The *Elisa*, (1854) Spinks 88; the *Edna*, 1921, 1 A. C. 735, 752. For a rather extreme application of this doctrine, see the *Baron Sternland*, 1918 A. C. 173, when contraband goods consigned to neutral port are seized on the ground of ultimate enemy destination, existence of extensive trade by the re-export of similar goods or the products thereof, from the neutral country to the enemy country, is of itself such strong circumstance of suspicion as divests the successful claimant from recovering costs or damage. See, however, the *Acteon*, (1815), 2 Dods. 48, 52: "It makes no difference whether the party inflicting the damage has acted from improper motives or otherwise. If the captor has been guilty of no wilful misconduct, but has acted from error and mistake only, the suffering party is still entitled to full compensation, provided he has not by any conduct of his own, contributed to the loss."

⁹⁴ The *Alwina*, (1916), 2 Br. & Col. Pr. Cas. 186; the *Cathay*, (1916), 2 Br. & Col. Pr. Cas. 303 (expenses of detention); the *Jeanne Marie*, (1855), 2 Spinks 165; the *Ostsee*, (1855), *ibid.*, 170, 171; the *Franciška*, (1855), 10 Moo. P. C. 73, 92; the *Hope*, (1813), 1 Dods. 226, 233; the *Christina Marie*, (1802), 4 C. Rob. 166; the *Catherine and Anna*, (1801), *ibid.*, 39; the *Stert*, (1801), 4 C. Rob. 65; the *Gute Gesellschaft Michael*, *ibid.*, 94 (see also the *Jonge Hermanus*, note, p. 95, where the same result was reached, despite the fact that it was represented that the value of the suspected property was less than the amount of the expenses); the *Beurse van Koningsberg*, (1800), 2 C. Rob. 169, 173: "If neutrals, must know they cannot enjoy the privileges of peace in time of war, without taking some disadvantages along with them." The *Imina*, (1800), 3 C. Rob. 167 (captors allowed their expenses, for it is incumbent on them to bring the cargo to adjudication); the *James Andrews*, (1862) Fed. Cas. 7189.

But the successful claimant need not pay premiums on insurance effected by the captor, the *Catherine and Anna*, (1801), 4 C. Rob. 39; the *Cairnsmore*, 1920 P. 209; S. C., 1921, 1 A. C. 439.

Nor is the claimant liable for any costs and expenses unless he is successful, the *Drottning Sophia*, 1920 P. 200. For a good general discussion of this problem, see the *Dusseldorf*, 1920 A. C. 1034, 1038. Even where the captors had been guilty of misconduct they were allowed their expenses minus those incurred because of the misconduct, in the *Principe*, (1809) Edw. 70. This same tenderness was displayed in the *Peacock*, (1802), 4 C. Rob. 185, where in awarding damages to the owner because of the misconduct of the captors, the court deducted the amount of what would have been the expenses had the captors acted properly. See also the *Hoop*, note 129, *infra*.

⁹⁵ See note 90, *supra*.

detain vessels suspected of carrying enemy goods, or to confiscate those ultimately destined for the enemy, would not only cause innumerable practical difficulties, but seriously hinder its conduct of the war. The result would be an advantage to the strong belligerent over the weaker neutral, for whether the right be conceded or not, a nation in such a case would act as its self-interest dictated. But the right has a real foundation,⁹⁶ in the fact of war. Nor does it, on principle, conflict with the doctrine that title to captured property passes only upon the decree of a competent court.

Having thus seen that the liability of captors for damages incurred in the detention is governed by whether or not they have acted with justifiable cause, attention is now directed to the question of the liability of captors when a loss has occurred between the time of seizure and of final adjudication.

Generally speaking, if the captors have acted with due care as regards the property seized, no responsibility for loss attaches.⁹⁷ This requirement is not satisfied by the care which the captor would give his own property,⁹⁸ but must be more than that. The captor, however, is under no obligation of absolute liability.⁹⁹ When a loss occurs, the cause of which may be laid to the captor's negligence or departure from the above standard, the successful claimant must be compensated in damages,¹⁰⁰ even though this involves

⁹⁶ The conditions under which this right may be exercised, is discussed, *infra*, under liability of the captors for loss.

⁹⁷ The *Valeria*, (1921), 3 Br. & Col. Pr. Cas. 834 (captor deliberately sank vessel on ground was danger to navigation); the *Oscar II*, (1920), 3 Br. & Col. Pr. Cas. 588; the *John*, (1818), 2 Dods. 336, 338; the *Maria*, (1803), 4 C. Rob. 348 (goods stolen from warehouse); the *Carolina*, (1802), 4 C. Rob. 256 (storm); the *Catherine and Anna*, (1801), 4 C. Rob. 39, "but if accident or mere casualty happen, it must fall on the party to whom the property is ultimately adjudged"; *Fay v. Montgomery*, (1852) Fed. Cas. 4709 at p. 1114: "An honest exercise of the discretion necessarily arising out of his command cannot be treated as such misconduct in the commander of a public ship, as will forfeit the protection of his fair title and render him liable to be treated as a true trespasser." (Compare this with the statement in the *Leucade*, (1855), 2 Spinks 228, 231.)

⁹⁸ The *Maria*, (1803), 4 C. Rob. 348, 353: said should not extend liability of carrier and innkeeper to persons who "are only to be required to furnish such care and due diligence, as they would apply to their own property."

⁹⁹ The *William*, (1806), 6 C. Rob. 316, 317 (compare Sir William Scott's statement here with that in the *Maria*, *supra*. In this case, Scott specifically rejects the standard he laid down in the *Maria*, but he does not mention the latter case); the *Maria*, *supra*, no extraordinary diligence required; the *New Sweden* (Aug. 1921) reported in 8 L. L. R. 480, 481: "It was long ago decided that a captor, by virtue of his belligerent right of capture, is not an insurer, and is under no obligation to insure."

¹⁰⁰ The *New Sweden*, (Aug. 1921), reported in 8 L. L. R. 480, 481; the *Catherine and Anna*, (1801), 4 C. Rob. 39, 40; the *Betsey*, (1798), 1 C. Rob. 93, 96: "It is clear law that a *bona fide* possessor is not responsible for casualties, but he may by subsequent misconduct, forfeit the protection of his fair title and render himself liable to be considered a trespasser from the beginning"; the *Amiable Nancy*, (1817) Fed. Cas. 331; the *Anna Maria*, (1817), 2 Wheat. 327; the *George*, (1815) Fed. Cas. 5328; the *Lively*, (1812) Fed. Cas. 8403; the notion of the cases seems to be that the misconduct relates back and renders the captor a

liability of the sovereign of the captor.¹⁰¹ This includes negligence not only in effecting the seizure¹⁰² or bringing it into port,¹⁰³ but also while the property is in the custody of the captor pending adjudication.¹⁰⁴ All this follows of course if the captor be guilty of wilful misconduct.¹⁰⁵ The damages are based upon the prime cost of the property.¹⁰⁶ Obligation of care and responsibility for lack of it, upon the part of the captor are the conditions upon which the belligerent right of capture is exercised.¹⁰⁷ It is an elementary principle that such a possessor is not liable for casualties, and to place upon the captor the obligation of due care in the premises, is but in accord with general principles. The title not passing to the captor until final decree, it is but just that the owner should be recompensed for loss due to carelessness of the captor. On the other hand, despite the fact that title is still in the claimant, and the possession in the captor, so long as the captor is lawfully pursuing an undoubted right, a loss is *damnum absque injuria*. The right of the neutral to his property, and the use of it in commerce, undamaged, is equally not to be questioned, but his right is not superior to that of the nation at war. Their rights are equal.¹⁰⁸ Superficially, there is an apparent inequality, for it may be said that the right of the neutral is exercised subject to the right of the belligerent to detain and if necessary,

trespasser from the start. If so, it is difficult to see why he should then be allowed the amount of his expenses, as though he had acted properly (see note 94, *supra*).

¹⁰¹ The *Oscar II*, 1920 A. C. 748, where it is said that the Procurator-General takes the place of the actual captor for all purposes. This liability does not extend to the Admiral of the station, under whom the captor acted, the *Mentor*, (1799), 1 C. Rob. 179. See also the *Louisa Agnes*, (1862) Fed. Cas. 8531, at p. 947. However, the government does not lose the benefit of a capture because of irregularity by the captor. The *Shark*, (1862) Fed. Cas. 12708.

¹⁰² The *Oscar II*, *supra*.

¹⁰³ The *Principe*, (1809) Edw. 70 (ship carried to dangerous port); the *William*, (1806), 6 C. Rob. 316 (refused to take pilot); the *Peacock*, (1802), 4 C. Rob. 185, 193 (carried to wrong port); the *Der Mohr*, (1800), 3 C. Rob. 129 (refused to take pilot).

¹⁰⁴ The *Gerasino*, (1857), 11 Moo. P. C. 88, 92: "It is the duty of the captor to send in as soon as possible . . . for adjudication . . . in order that speedy justice might be done and the property, if illegally seized, might be restored, with as little delay as possible to the owner"; the *Madonna Del Burgo*, (1802), 4 C. Rob. 169 (captor delayed in bringing proceedings); the *Hoop*, (1801), 4 C. Rob. 145 (goods pillaged); the *Zee Star*, (1801), 4 C. Rob. 71 (demurrage allowed because of delay by captor in consenting to restitution); the *Concordia*, (1799), 2 C. Rob. 102 (cargo found deficient after decree of restoration); the *Corier Martimo*, (1799), 1 C. Rob. 287; the *Santa Catharina*, (1919), 88 L. J. P. 170.

¹⁰⁵ The *Dove*, (1813) Fed. Cas. 4035 (damages against recaptor for embezzlement); the *Der Mohr*, the *William*, *supra*, note 99; the *Frie Damer*, (1805), 5 C. Rob. 357 (damages to the vessel and personal injury to the crew).

¹⁰⁶ The *Lively*, (1812) Fed. Cas. 8403, at p. 633, and authorities cited. There is here a statement to the effect that there is no case where the voyage has been lost, that the profits would be allowed.

¹⁰⁷ The *Oscar II*, *supra*; the *Valeria*, 1921, 1 A. C. 480, 481. For duty of the captor, generally, see the *Sudmark*, 1918 A. C. 475.

¹⁰⁸ The *Stigstad*, 1919 A. C. 279, 284.

bring in for scrutiny before a court of prize. But this latter is merely a part of the right of the belligerent, not an additional right.

III

There remains but one more aspect of the problem to consider—what sort of interest is acquired by the captor as a result of the seizure? Clearly he is not to be regarded as a trespasser, nor, under the prevailing rule, has he the title in the largest class of cases—capture of neutral property. The authorities are not clear as to the exact nature of the situation between capture and final adjudication. Sir William Scott speaks of it as an “imperfect right—a *jus persequendi*—a right of action and no more, no right of interest, but a mere right of bringing to adjudication.”¹⁰⁹ By others, the property is regarded as being in abeyance or state of legal sequestration pending adjudication in trust for the benefit of those who may ultimately be entitled.¹¹⁰ On the other hand, it seems that the captor is not required to preserve the property in specie.¹¹¹

The difficulty of attempting to categorize the situation is obvious. It will perhaps answer the purpose to say, that as the capture is made because of certain circumstances and to attain a certain purpose—to wit, justifiable cause and either release or condemnation, the captor acquires an interest sufficient to enable him to fully avail himself of his belligerent rights.

As to the interest acquired by the decree of condemnation, the matter is less complicated. There is hardly any exception¹¹² to the doctrine that the captor then holds free from all pre-existing claims against the *res*. Hence it is that the captors are preferred to the holders of a mortgage,¹¹³ of a bottomry bond,¹¹⁴ of a lien for necessities,¹¹⁵ of the claim of a pledgee,¹¹⁶ of the

¹⁰⁹ The *Elsebe*, (1804), 5 C. Rob. 173, 183. The *Susanna*, (1805), 6 C. Rob. 48, 51: “While the ship is at sea, he (the captor) may deliberate and after mature investigation, discharge himself of the custody.” In another place, he speaks of “their inchoate right as captors.” The *Lord Nelson*, (1809) Edw. 79, 82. See also the *Fanny*, (1793) Pet. Adm. Dec. 309, 322; Atherly-Jones, *op. cit.*, p. 609.

¹¹⁰ *Harlan v. Nassau*, (1862) Fed. Cas. 6066; Kent, *Commentaries*, Abdy's ed., p. 248; De Burgher, *op. cit.*, pp. 185-6; Wheaton, 5th ed. Phillipson, p. 581. See the *Peterhoff*, (1865), 72 U. S. 28, for a vigorous pronouncement to the same effect.

¹¹¹ The *Zamora*, 1916, 2 A. C. 77.

¹¹² See *infra*, p. 506.

¹¹³ The *Emil*, (1915), 1 Br. & Col. Pr. Cas. 257 (held by British citizen) allowed mortgagee to appear as claimant, the owner not being present; the *Tergestia*, (1915) 2 L. P. C. 149; the *Ocean Bride*, (1855), 2 Spinks 8, 22; the *Aina*, (1854) Spinks 8 (held by neutral); the *Carlos F. Roses*, (1899), 177 U. S. 655, 666 (see p. 669 for citation of English cases); the *Buena Ventura*, (1898), 87 Fed. 927, 937 (held by loyal northern citizen); the *Delta*, (1862) Fed. Cas. 3777; *Bulchos v. Darrel*, (1795) Fed. Cas. 1607; Judgment No. 6 (1918), High Prize Court Judgments—China, p. 25.

¹¹⁴ The *Tobago*, (1804), 5 C. Rob. 218 (held by neutral and executed prior to outbreak of war); the *Aina*, *supra*; the *Tergestia*, *supra*; the *Frances*, (1814), 8 Cranch 418; the *Mary*, (1815); 9 *ibid.*, 126; the *Carlos F. Roses*, *supra*.

¹¹⁵ The *Nassau*, (1863) Fed. Cas. 10028; the *Battle*, (1868), 6 Wall. 498 (repairs and sup-

claim for reimbursements of advances,¹¹⁷ of the holder of a salvage lien,¹¹⁸ of that of the seller for the unpaid purchase price,¹¹⁹ of an average claim,¹²⁰ of liens in general,¹²¹ and even of seamen's wages.¹²² It is broadly stated that the honesty of the transaction is of no effect,¹²³ and that such claims will not be recognized, no matter how urgent the case, or great the hardship.¹²⁴

On principle, there seems to be little or no objection to such a result. Most of such claims are founded upon private contract. As a rule the belligerent has no access to the original agreement, and would face insuperable difficulties in attempting to disprove such claims as collusive. The matter is well put in one case: "If the door were once open for the admission of equitable claims and liens, there would be no end to discussion and imposition, and the simplicity and celerity of prize proceedings, would be alike sacrificed."¹²⁵

A reason of greater moment is that any other position would render extremely hazardous and practically worthless, the belligerent right of capture upon the high seas.¹²⁶ It would be a simple matter for an enemy, or a neutral, to arrange all sorts of claims against his property, and unless this belligerent right were superior, naval power, would, in this respect, cease to be of any potency.¹²⁷

plies by a loyalist citizen); the *Carlos F. Roses*, *supra*; the *Tergestia*, *supra*; the *Rossia*, (1904), 2 Russ. & Jap. Pr. Cas. 43; Takahashi, *op. cit.*, p. 557.

¹¹⁸ The *Odessa*, 1915 P. 2 (held bill of lading as security); affirmed in the Privy Council, 1 Br. & Col. P. C. (1915) 544; the *Flamenco*, (1915), 1 Br. & Col. Pr. Cas. 509, 511; the *Eumaeus*, 1915, 1 Br. & Col. Pr. Cas. 605, 610; the *Carlos F. Roses*, *supra*.

¹¹⁷ *Clan Urquhart*, (1915), 1 Br. & Col. Pr. Cas. 498n.; (by British merchants as to freight); the *Linaria* (1915), 2 L. P. C. 286 (by British merchants); the *Ida*, (1854), 1 Spinks 331 (by neutral on cargo); the *Velasco*, (1861) Fed. Cas. 16910a (by master for repairs, supplies and wages); the *Carlos F. Roses*, *supra*.

¹¹⁸ The *Nigretia*, (1905), 2 Russ. & Jap. Pr. Cas. 208, Takahashi, *op. cit.*, p. 551, 553.

¹¹⁹ The *Marianna*, (1808), 6 C. Rob. 24.

¹²⁰ The *Hoffnung*, (1807), 6 C. Rob. 383 (part of cargo sold before the seizure, to pay for repairs. Captor of the condemned cargo claimed contribution.)

¹²¹ The *Ariel*, (1857), 11 Moo. P. C. 119, 135; *Harlan v. Nassau*, (1862) Fed. Cas. 6066; *Cargo ex Manchuria*, (1905), 2 Russ & Jap. Pr. Cas. 69.

¹²² The *Sally Magee*, (1866) Fed. Cas. 16216. See also the *Velasco*, note 113, *supra*.

¹²³ The *Ida*, (1854), 1 Spinks 331, 341.

¹²⁴ The *Napoleon*, (1862) Fed. Cas. 10012 (claimant was the owner, and his servant, in violation of orders; had used the vessel in the Confederate service).

¹²⁵ The *Delta* (1862) Fed. Cas. 3777, at p. 446.

¹²⁶ Judgment No. 4 (1919), Judgments of the High Prize Court, China, 18: "According to international law, a belligerent has an absolute right to what he has lawfully captured. Such acquisition, being original in character, is free from any right to the same thing that may exist in any third party; *a fortiori*, the existence of such rights cannot prevent lawful capture." Judgment No. 5, *ibid.*, 22, acc.

¹²⁷ The *Tobago*, (1804), 5 C. Rob. 218, 222-23, where Sir William Scott elaborates upon this notion. See 27 *Judicial Review* 170, 171, for a suggestive comment upon this problem. It may be urged that the same considerations which control in the case of salvage, bottomry, and the like, where no question of prize is involved, are applicable here. But this has no support from the authorities.

One class of cases, however, must be noted, where the captor does take *cum onere*. "That he is held to take *cum onere* is undoubtedly true, as a rule which is to be understood to apply, where the *onus* is immediately and visibly incumbent upon it."¹²⁸ Hence it is that a captor is bound to pay the freight upon cargo condemned, when the carrier is a neutral.¹²⁹ If, however, the cargo is composed of a contraband, generally, no freight will be allowed, though it appears to be regarded as a matter of discretion.¹³⁰

The results above reached are in harmony with the rule that title does not pass until the decree of a competent tribunal. The captor acquires indefeasible right only at that time¹³¹—a right which is, with but little exception, superior to every other claim against the *res* in controversy.

In closing, a word may be said about the proposed international court of prize.¹³² It is obvious that such an institution, functioning properly, would do away with many of the difficulties raised by present prize practice. No aspersion is intended nor is cast upon the tribunals at present existent. But it is believed that the submission of such essentially controversial matters to an international tribunal, guided by international law, and unrestrained by the municipal regulations of any one state, will best serve the ends of justice, and reduce international friction, on this score, to a minimum.¹³³

¹²⁸ *The Tobago*, *supra*, p. 222.

¹²⁹ *The Stigstad*, 1919 A. C. 279; the *Iolo*, (1915) 1 Br. & Col. Pr. Cas. 291; the *Juno*, (1914), *ibid.*, 151 (laid down the rule since followed, of allowing what is fair and reasonable under the circumstances); the *Katwik*, (1915) 1 Br. & Col. Pr. Cas. 282; the *Vrouw Henrica*, (1803), 4 C. Rob. 343, 347; the *Der Mohr*, (1802), *ibid.*, 314 (amount of freight decreed exceeded value of the cargo condemned); the *Bremen Flugge*, (1802), 4 C. Rob. 90, 91; the *Hoop*, (1799), 1 C. Rob. 196, 219 (captor's expenses preferred, however); the *Emanuel*, (1799), *ibid.*, 296; the *Amy Warwick*, (1862) Fed. Cas. 343 (when neutral has *jus in re*—when he is in possession with a right of retention until a certain amount is paid him, the captor takes *cum onere*); *Ship Societe*, (1815), 9 Cranch 209; the *Hazard*, (1815), *ibid.*, 205; *Antonio Johanna*, (1816), 1 Wheat. 159.

The captor may also have other liabilities to discharge. The *Sorfarren*, (1915), 1 Br. & Col. Pr. Cas. 589 (claim for general average); the *Chateaubriand*, (1916), 2 Br. & Col. Pr. Cas. 69 (demurrage, insurance and salvage); the *Gothland*, 1916 P. 239n. (general average and salvage). When the vessel is condemned, the captor may be awarded freight with respect to cargo. The *Fortuna*, (1802), 4 C. Rob. 278. For criticism of this general rule, see Holland, *Prize Law*, p. 758. It is a little difficult to see why seamen's wages would not be open and apparent, so as to satisfy the requirements.

¹³⁰ The *Prins der Nederlander*, 1921, 1 A. C. 754 (this discretion will be strictly exercised; the fact of the ship owner's knowledge is not by itself decisive); the *Jeanne*, 1917 P. 8.

¹³¹ This is clear on the authorities, as to neutral property, and should be so, on principle, as to enemy, *supra*, p. 496.

¹³² Convention XII (1907).

¹³³ See discussion in Oppenheim, *op. cit.*, 3d ed., pp. 638 ff., and Smith, *op. cit.*, 5th ed. pp. 327 ff.

EDITORIAL COMMENT

THE ANNUAL MEETING OF THE SOCIETY

The Eighteenth Annual Meeting of the American Society of International Law convened in Washington in the New Willard Hotel at 8:30 o'clock on the evening of April 24 last, and when it adjourned on April 26, it had added to its record one of the most successful meetings in its lengthening list of creditable accomplishments and had witnessed for the first time important changes in its effective executive and administrative personnel.

This was the first meeting since the Society was organized in 1906 that it had met without the inspiring presence of its only President, the Honorable Elihu Root, who was in California by order of his physician. In his absence the meeting was opened by one of the distinguished Vice-Presidents of the Society, the Honorable Charles Evans Hughes, Secretary of State of the United States, who two days later was elected to the office of President, upon the retirement of Mr. Root as President and his elevation to the position of Honorary President. On that occasion the Society sent the following telegram of affection and appreciation to Mr. Root at his hotel in San Francisco:

The American Society of International Law, meeting in plenary session on this twenty-sixth day of April, nineteen hundred twenty-four, accepts with profound regret the retirement of its first and only President since its foundation.

Although distressed by the severance of official relations, the members are grateful for the eighteen years of affectionate association, and consider it an inestimable privilege to have been permitted from year to year to observe in the midst of their meetings the skill and precision with which your presidential addresses—each in its appropriate place—have contributed to the growth of the newer and progressive Law of Nations.

The Society and its members in taking this official farewell wish you not only health and happiness but many years of further service in the sacred cause of international law.

Denied the presence of Mr. Root, the members of the Society were treated at the opening session to a scholarly address by Dr. James Brown Scott, who eulogized Mr. Root's services to international law in the form of an epitome of his exposition of the subject in the various topics discussed in his seventeen annual presidential addresses before the Society. An attempt to summarize Dr. Scott's lengthy and brilliant paper would be futile. It will be found in full in the printed volume of proceedings of the Society.

As an indication of the illuminating contents of the document, Dr. Scott's concluding paragraphs will be here reproduced:

I would like to advert, in conclusion, to the remark which I quoted at the beginning of this address, that when Mr. Root's countrymen are as far removed from him as he is from the founders of the Republic, they will consider him as worthy of our Revolutionary Fathers. I desire very modestly to concur in this remark and its implications. And this address, which is longer than I had hoped, but shorter than it should be to set forth his many achievements, will fail of its purpose, if it does not show that Mr. Root's addresses delivered at the annual meetings of the American Society of International Law deal with the fundamentals of international life and of international development, and are, in very truth, the text of the new law of nations.

Happily for us, Mr. Root is in the afternoon, not the evening of life; his sun is in the Heavens, still high above the mountain-top, and the world is aglow with light!

Secretary Hughes thanked Dr. Scott in the name of the Society for his "very instructive review of a distinguished service." "The country is fortunate," he continued, "in having had the inspiration and the benefit of Mr. Root's long services. I share the opinion which Dr. Scott has voiced with respect to the estimate of the future of the value of Mr. Root's contribution to sound opinion and to the development of an appropriate appreciation of international institutions."

The Distinction Between Legal and Political Questions

The morning session on Friday, April 25th, was devoted to a report from the Committee on the Extension of International Law on the topic of "The Distinction between Legal and Political Questions." The report took the form of addresses by four members of the committee: Professor Charles G. Fenwick, of Bryn Mawr College, acting chairman in the absence of Professor Jesse S. Reeves, of the University of Michigan; Professor Edwin M. Borchard, of Yale Law School, Professor Quincy Wright, of the University of Chicago, and Professor Manley O. Hudson, of the Harvard Law School.

Professor Fenwick dealt with the subject in a preliminary way. He said that, in the usage of foreign offices, legal questions are those in which a dispute as to the respective rights of the parties is governed by a fairly definite rule of international law while, in contrast, political questions are those in respect of which there is no definite rule of international law marking the rights and duties in dispute. This distinction, he said, grew out of (1) the development of international law from usage and custom which are uncertain and inelastic; (2) the defective organization of the society of nations in the matter of an obligatory jurisdiction to develop an international customary law and of an international executive agency for the protection of rights recognized by law; and (3) the right of the individual state to be the ultimate arbiter in many "domestic" questions which react upon the

welfare of other states. The problem of the committee, he concluded, was to study carefully the conditions of international relations to which are due the distinction between legal and political questions which, he thought, was one of the fundamental problems in the development of international law.

Professor Borchard was of the opinion that the distinction was quite recent and had its origin in the growth and practice of arbitration. He doubted that the existence of an applicable rule of law is important to the conclusion to adopt the judicial process. "If the question does not affect what the nation may deem to be its vital interests, or if it finds that it has less to lose by a judicial settlement than by war or any other political method," it will be submitted to judicial determination. "On the other hand, if the question does affect the nation's vital interests, its origin in a treaty or its dependence upon a recognized rule of law, will not induce its voluntary submission to arbitration." After considering the utility of the distinction, Professor Borchard concluded:

The prevalent conviction, not without some historical foundation, that there are certain questions of vital or political interest which can only be settled by force should be counteracted by the assertion, sustained not by history but by reason, that there are no questions which inherently demand solution by force and that self-restraint, inspired perhaps by a realization of unhappy physical consequences even to the victor, may convert almost any international difference into a legal question.

Professor Wright held that there are "three conditions under which states hesitate to appeal to law: (1) where there is no law covering the dispute, (2) where there is no tribunal which can be relied on to apply the law impartially, (3) where the application of law would not give the results which the state wants."

As to the first condition he thought that "in practically all questions international as well as national courts can find a rule, a principle or at least a standard of law to apply if they take the time, though doubtless on many questions it would take a brave man to prophesy before the event just what that rule, principle or standard would be."

The second objection he hoped has been remedied by the establishment of the Permanent Court of International Justice at The Hague.

The real difficulty, he said, was presented by the third condition as "statesmen frequently avoid submission of disputes to law, not because they do not know the law, but because they know it too well. They frequently desire to support claims that they feel are justified by economic interest, political expediency, or even sound morality, but which they are fully aware are not justified by law." Such questions, he said, were political questions and "the difficulty can only be met by developing the law so that it will afford full protection to all claims which are really sound from an international point of view."

He then considered at length whether the United States in asserting the Monroe Doctrine relied on economic, political, moral or other claims not as yet recognized by international law. He concluded that the doctrine is in the main supported by international law and treaties, though its most recent interpretations rely on political considerations alone.

Professor Hudson, who, due to his inability to reach Washington in time, delivered his address on Saturday morning, expressed the view that there is no hard and fast rule to be drawn between legal and political questions; that law is generally the hand-maiden of policy, and it is particularly important in international law that we should frankly avoid the inadequacy of logic for the solution of the problems which have to be handled; that law is not merely a matter of evolution, but of service along with other human agencies to develop a solution of current problems which will serve general peace.

He considered the nature of the questions involved in the bombardment of Corfu by Italy to enforce demands for an indemnity for the murder of Italians at Janina upon the boundary commission sent there by the Conference of Ambassadors at Paris. The Italian Government's position, based on legal grounds and supported by juristic argument, Professor Hudson thought, was in truth a political position, taken for political reasons and that there was not very much to gain by attempting to isolate the legal features of the question and dealing with them apart from the political features.

The afternoon of Friday was given over to a meeting of the Executive Council, and at 4:30 P.M. the members of the Society were received by the President of the United States in the White House. About seventy-five members attended the reception and received a cordial handshake from President Coolidge.

The Recognition of New States and Governments.

The session on Friday evening, April 25th, was devoted to addresses on the subject of "The Recognition of New States and Governments." Mr. Edward A. Harriman, Lecturer on International Law at George Washington University Law School, considered the definition of recognition and the distinction between *de facto* and *de jure* recognition, the use of which terms he thought was misleading in international law. Taking up the attitude of the American Government toward recognition of Soviet Russia as his special topic, Mr. Harriman described Soviet Russia as a government with a written constitution, with courts and with a religion called Communism. "Like other religions, Communism calls for missionary work, and the Bolshevik Government has supported missionaries in many other countries for the purpose of spreading the religion of Communism, with the intention of overthrowing the existing bourgeois governments of the unbelievers." Mr. Harriman stated that there is no such thing "as the right of a government to recognition, or the duty of another government to recognize it. . . . The question is one solely of national policy." "If it is the policy

of the United States to recognize the fact of the existence of a new government," he said, "the Soviet Government is clearly entitled to recognition. If, on the other hand, the character of that government is to determine the policy of the United States in recognizing it, there is ample evidence in the history of that government to justify a refusal of recognition. The government which has abolished God, abolished private property, repudiated its debts, confiscated hundreds of millions of the property of foreigners and executed millions of its opponents, can hardly be said to have acted in accordance with American ideals."

The next speaker was Mr. Allen W. Dulles, Chief of the Division of Near Eastern Affairs of the Department of State, who took as his special topic the recent attitude of the American Government toward recognition of Greece. Mr. Dulles first contrasted the policy of the United States one hundred years ago in the recognition of the new revolutionary states in Latin America with the recognition of Greek independence growing out of the revolution during the same period. He then gave an historical background of the non-recognition of the Greek sovereigns between 1921 and 1924 and considered the arguments for and against recognition. He explained the character of American relations with Greece during the period of non-recognition, and ended with the recognition of the Greek Government in April 1924. He drew the following conclusions:

1. The Greek precedent indicates the important influence of considerations of general policy upon recognition. It is impossible to fix definite rules or to state that, given a certain situation, recognition should inevitably follow. It must constantly be borne in mind that, while circumstances may justify recognition, there is no legal duty to accord it.

2. The Monroe Doctrine and the policy of non-intervention in Transatlantic affairs have had a very distinct influence upon this country's practice in dealing with the recognition of new states and governments in Europe. In the case of Greece there resulted from these policies a disinclination to follow a separate course of action with respect to the recognition of a particular régime at a time when other Powers withheld recognition and the local situation was far from stable.

3. The Greek precedent also brings out clearly the modern tendency to be less technical in international dealings in matters relating to recognition and non-recognition. Principles of common sense are applied and, while recognition retains its importance in regulating formal international relations, under modern practice it is being demonstrated that, even in the absence of recognition, intercourse may, by mutual understanding, continue and diplomatic relations be maintained. Non-recognition, plus a severance of diplomatic relations, as in the case of Russia, differs essentially from non-recognition plus a maintenance of diplomatic relations, as in the case of Greece.

The last speaker on the subject of recognition was Professor John H. Logan, of Rutgers College and the State University of New Jersey, who discussed the American attitude toward Mexico. He pointed out two stages

in the development of this attitude, the first ending with the recognition of General Diaz in 1877 as to which President Hayes, in a message to Congress, said that the custom of the United States, when such changes of government had occurred in Mexico, was "to recognize and enter into official relations with the *de facto* government as soon as it should appear to have the approval of the Mexican people and should manifest a disposition to adhere to the obligations of treaties and international friendship." The attitude of the United States Government toward General Huerta when he came to the head of the Mexican Government in 1913 was stated by Professor Logan to mark a new policy, by requiring an assurance that outstanding questions between the two countries would be dealt with in a satisfactory manner before recognition would be granted. This departure from previous practice was further emphasized by President Wilson's declaration in 1916 that "the Government of the United States will refuse to extend the hand of welcome to anyone who obtains power in a sister republic by treachery and violence" and by the withholding of recognition from the Obregon Government for three years because of his refusal to make a treaty which would secure American property rights in Mexico.

Professor Logan concluded: (1) that recognition should not be used as a punitive or threatening instrument, nor for achieving what might be achieved in a more friendly way; (2) the question of recognition should not be allowed to become associated in the public mind with any idea of intervention; (3) the principle of the treaty provision adopted at the Central American Conference in Washington, December 1922, against the recognition of governments which come into power through a *coup d'état* or revolution so long as the freely elected representatives of the people have not constitutionally reorganized the country, should be extended so as to become an American system, subscribed to by all.

The session on Saturday morning, April 26th, was devoted to a discussion of the papers dealing with the distinction between legal and political questions. The discussion was long and animated and it was necessary to bring it to a close at eleven-thirty o'clock in order to transact the necessary business of the Society. The business meeting will be dealt with in this comment after describing the papers delivered at the annual dinner.

The Annual Dinner

One hundred and eighty members and their guests assembled at dinner at the final gathering which brought the meeting to a close. The Honorable Charles Evans Hughes, Secretary of State of the United States, the newly elected President of the Society, presided as Toastmaster. In the course of his opening remarks, Mr. Hughes pointed out the striking distinction between municipal law and international law with respect to the ease with which the former is manufactured, whereas the latter "is the hardest thing in the world to make." Although we are endeavoring to overcome the difficulties due to

the enormous increase in the volume of municipal law, he said, we are doing all we can to magnify and extend international law. Uncertainty is common to both, however, he continued, and when we think of the great labor involved in the efforts to have reasonable uniformity of laws in the States of the Federal Union with its homogeneous people, it is not strange "that we meet difficulty in the development of law in the international field, with different nations, with different histories and traditions, and with distinct and conflicting conceptions of national interests." The only effective way, he said, for the maintenance of peace and the reign of law "is through the increased disposition of peoples to be reasonable and fair," and that duty begins at home. He concluded as follows:

We are in a unique position at this time. There is no menace to our security and there is no reason why we should have the slightest apprehension as to our ability to take care of ourselves. There is no reason for any reluctance to be just. Why should we not present to the world an example of a people dedicated to justice, to international justice? What is there in the way of our expressing as a nation the generous sentiments which animate us as individuals? There is really nothing that we need to sacrifice in order to obtain the good will of all peoples on the earth and thus open the way to make our contribution to the advancement of international law.

Dr. Frank J. Goodnow, President of Johns Hopkins University, who was the next speaker, spoke of the contacts of the East with the West. These contacts with which we are most familiar, he said, have been of the last 250 years, during which the East has been subjected to the political and economic domination of the West. Outside of this period, he continued, we are apt to go back to the classical period of 2,000 years ago, but he called attention to the period in between when there was no European military Power which could stand against the power of the East and when Mongol or Turkish armies always were in Europe as invaders or conquerors, "so that if we take a long enough view of history . . . I think we can see that the claim of Europe to its inherent military superiority of the East is a vain one." Dr. Goodnow pointed to the testimony of European travellers and writers who had visited the East which showed that during the period before the Renaissance the East had a civilization that far outranked the West. The superior civilization of the latter since the Renaissance, he said, was due to scientific development, but, he continued, "there is no reason for supposing that there is any inherent difference between the East and the West, and the East is now showing that it is capable also of adopting scientific principles and applying scientific methods." He thought that the white races should reform their ideas with regard to their inherent intellectual superiority in the interest of friendly relations with the East.

The next speaker was the honorable Edwin B. Parker, Umpire of the Mixed Claims Commission, United States and Germany, who gave an

account of the work of the Commission. He said that the Treaty of Berlin of August 25, 1921, restoring friendly relations between the United States and Germany, and the agreement of August 10, 1922, constituting the commission, are unique in international relations for

this is the first instance in recorded history where a treaty, restoring friendly relations between belligerents, prescribes what the vanquished nation shall pay for, and leaves the amount to be paid to judicial ascertainment by a tribunal in the selection of which both nations have a voice and before which both are fully heard.

The terms of this treaty are consistent with the practical idealism that carried America into the war. Here are found no annexations, no penalties, and no punitive indemnities, but only provisions for compensation or reparation for damage inflicted, which is the essence of justice.

The last speaker of the evening was the Reverend Edmund A. Walsh, of Georgetown University, late Pontifical Relief Envoy to Russia, who described the situation in Russia and expressed his views as to the conditions of eventual intercourse between that country and the United States. "It is absolutely beside the mark," he said, "for those entrusted with the destinies of the American commonwealth to be bombarded with evidence . . . purporting to establish the great trade possibilities in Russia, or the practical failure of Communism, or the new economic policy, or the attempts to establish a public school system, or balance the budget and stabilize the currency," for "these particular signs of a return to right reason still leave the depths of the Russian problem untouched." He said that an entirely new state of conditions has been created by the Soviet Government which render the old criterion of recognition inadequate. The United States is asked to recognize, "not Russia, which no longer exists as a treaty-making Power, but a Union of Socialist Soviet Republics of the World . . . intended to embrace, eventually, the entire world, every other country, including America, being invited to join as a constituent state, and whenever the invitation is refused, the recalcitrant country is to be forced into the Union by revolutionary uprisings."

Even if such subversive propaganda be not conducted in America, the speaker continued, the conditions under which foreigners must live and do business in Russia under Soviet law are such as to deprive them of what Americans regard as their inalienable rights, and which cannot be considered as falling within the zone of negotiable issues. Among the disabilities of foreigners in Russia, he mentioned the inability to acquire property and the confiscation of property formerly owned, the requirement for the admission of the state as a partner in business enterprises, the deprivation of control over the raising and education of children, and the inhibitions against helping one's native country if it happens to be a section of the international bourgeoisie which do not allow equal rights to the Communist system of ownership. "In fact, in all his dealings with Soviet justice, which is admittedly

class justice, the American taking up residence in Russia must never overlook the fact that his life, as well as his property, is to all intents and purposes at the disposal of the Central Executive Committee."

Business Meeting

The business of the Society was transacted at the Saturday morning session of the Society, at three meetings of the Executive Council held in the afternoon of April 25th, the morning of April 26th, on May 22d, and at a meeting of the Executive Committee held on May 13th.

At the session held on Saturday morning, April 26th, the Society, in addition to electing Mr. Root Honorary President and Mr. Hughes President; as previously stated, elected the following Vice-Presidents and members of the Executive Council to serve until 1927:

Vice-Presidents

Hon. Chandler P. Anderson	Hon. Henry Cabot Lodge
Hon. Simeon E. Baldwin	Hon. John Bassett Moore
Mr. Charles Henry Butler	Hon. William W. Morrow
Mr. Frederic R. Coudert	Hon. Oscar S. Straus
Hon. Jacob M. Dickinson	Hon. George Sutherland
Hon. George Gray	Hon. William H. Taft
Mr. Charles Noble Gregory	Dr. James Brown Scott
Hon. David Jayne Hill	Prof. George Grafton Wilson
Hon. Robert Lansing	Mr. Theodore S. Woolsey

Executive Council to serve until 1927

Prof. Cephas D. Allin, Minn.	Mr. Frank L. Polk, N. Y.
Mr. William C. Dennis, D. C.	Hon. Henry W. Temple, Pa.
Prof. Manley O. Hudson, Mass.	Mr. Charles Warren, D. C.
Prof. John H. Latané, Md.	Mr. Lester H. Woolsey, D. C.

Dr. James Brown Scott had previously given notice to the Executive Council of his intention to withdraw from the office of Recording Secretary of the Society and Editor-in-Chief of the *American Journal of International Law*, and the following statement of appreciation of his services, prepared by a committee of the Council, was read by Mr. A. K. Kuhn, unanimously approved by the Society and ordered to be printed in the *Proceedings*:

After eighteen years of faithful and untiring service, Dr. James Brown Scott has indicated a desire to retire from his long service as Recording Secretary of the Society and as Editor-in-Chief of its JOURNAL. The Executive Council does not wish the occasion to pass without an expression of its profound regret at the loss of Dr. Scott's services in both these offices, and desires the members of the Society to understand that only after persistent efforts to have him reconsider his

purpose and his determined refusal so to do that it has been willing gracefully, though reluctantly, to accept the situation.

Dr. Scott was not merely one of the founders of the Society, but the one upon whom the chief burden fell in executing the plan and in carrying it forward to success. He brought to the Society from the beginning, and has continued to evidence throughout, a genius for organization, high scholarly ideals and an untiring industry without which the Society could not have been the force that it now is in the study of international law and in the establishment of better international relations on the basis of law and justice.

As Dr. Scott is by no means retiring from his activities in the Society, but only from the burdens of active office, it is not intended to review his achievements or public services, but only to emphasize that he has never permitted other positions in government and unofficial service to interfere either with the efficient administration of the Society's affairs as Secretary, nor with the scholarly direction of its JOURNAL, to which he contributed not only numerous articles but the chief body of editorial comment. That both phases of the Society's activities should have continued successfully through the difficult years of the war is due to the wise counsel of our distinguished President, Mr. Root, and others, but particularly to him upon whom, in large measure, the detail work fell. We are especially indebted to Dr. Scott for systematically and ably bringing to the notice of our members both the problems confronting our government and the solutions arrived at in that period, so momentous in its effects upon international law.

The committee asks that this memorial be received by the Society, and be printed in the *Proceedings* as a mark of its deep appreciation of his long years of faithful service and of its hearty good wishes for his happiness and continued usefulness.

On behalf of the committee appointed by the Executive Council at its meeting last year¹ to consider an amendment which would clarify the meaning of Article VII of the Constitution, Mr. Kuhn also read the following draft of an amendment which will be duly notified to the members of the Society for action at its next annual meeting:

Resolved, That Article 7 of the Constitution of the Society relating to resolutions be and the same is hereby amended by inserting after the first two words of that article, the following clauses:

"Relating to the principles of international law or to international relations," so that the article will read as follows:

"All resolutions relating to the principles of international law or to international relations which shall be offered at any meeting of the Society shall, in the discretion of the presiding officer, or on the demand of three members, be referred to the appropriate committee or the Council, and no vote shall be taken until a report shall have been made thereon."

In this connection, the Society adopted the following resolution offered by Mr. Kuhn:

Resolved, That a committee of seven be appointed by the President to make a study of the Constitution of the Society with a view to con-

¹Proceedings for 1923, p. 137.

sider the advisability of amendments thereto for bringing it more into line with the experience and needs of the Society after the eighteen years of its existence, and that the amendments proposed by it be printed in the notice of the next annual meeting as required by the amendment clause, for action by the Society at its next annual meeting.

Upon the recommendation of the Executive Council, the Society elected to honorary membership M. Charles Lyon-Caën, formerly Dean of the University of Paris, a member of the Institute of France, perpetual Secretary of its Academy of Moral and Political Sciences, and President of the Curatorium of the Academy of International Law at The Hague.

Before adjourning the Society adopted a resolution in memory of the late Justice William R. Day, one of the Vice-Presidents of the Society, who died on July 9, 1923.

At the meeting of the Executive Council which followed immediately after the morning session of the Society, Admiral William L. Rodgers was elected chairman of the Council and the following members were elected to the Executive Committee:

Chandler P. Anderson	David Jayne Hill
Charles Henry Butler	James Brown Scott
Charles Noble Gregory	Judge Kathryn Sellers
George Grafton Wilson	

Dr. Scott subsequently declined to serve, and Mr. Robert Lansing was elected to the vacancy at the meeting of the Council on May 22d.

Mr. Charles Henry Butler expressed his desire to retire from the office of Corresponding Secretary, which he had held since the organization of the Society, and the following resolution of appreciation of his services was adopted:

The Executive Council of the American Society of International Law at its meeting on April 26, 1924, desires to express its regret at Mr. Charles Henry Butler's retirement from the post of Corresponding Secretary, which he has held from the organization of the Society on the 12th day of January, 1906, until the present day.

It avails itself of this occasion to express formally its appreciation of Mr. Butler's services, not only as Corresponding Secretary, but as a member of the Council, of the Executive Committee, and the other committees of the Society since its organization, and expresses its great pleasure that the services rendered without stint to the Society in all its activities will be continued by Mr. Butler in his capacity as Vice-President of the Society, and as a member of the Executive Council and of the Executive Committee.

The Honorable Charles Cheney Hyde was thereupon reelected Treasurer, Mr. George A. Finch was elected Recording Secretary, and Mr. William C. Dennis, Corresponding Secretary. At this meeting and at the meeting on May 22d, the Board of Editors of the AMERICAN JOURNAL OF INTERNATIONAL LAW was elected as follows:

Honorary Editor-in-Chief: James Brown Scott, Washington, D. C.

Editor-in-Chief: George Grafton Wilson, Harvard University.

Managing Editor: George A. Finch, Washington, D. C.

Chandler P. Anderson, Washington, D. C.

Edwin M. Borchard, Yale Law School.

Philip Marshall Brown, Princeton University.

William C. Dennis, Washington, D. C.

Edwin D. Dickinson, University of Michigan.

Charles G. Fenwick, Bryn Mawr College.

James W. Garner, University of Michigan.

David Jayne Hill, Washington, D. C.

Manley O. Hudson, Harvard Law School.

Charles Cheney Hyde, Washington, D. C.

Arthur K. Kuhn, New York City.

Ellery C. Stowell, Washington, D. C.

Quincy Wright, University of Chicago.

The appointment of committees was referred to the Executive Committee, and at a meeting held on May 13th, the Committee appointed the following:

Standing Committee on Selection of Honorary Members: George G. Wilson, Chairman; Charles Cheney Hyde, Ellery C. Stowell.

Standing Committee on Increase of Membership: Oscar S. Straus, Chairman; Philip Marshall Brown, Arthur K. Kuhn, John H. Latané, Cephas D. Allin.

Committee on Annual Meeting: Lester H. Woolsey, Chairman; Philip Marshall Brown, David Jayne Hill, John H. Latané, Charles Warren, Judge Kathryn Sellers, Thomas Raeburn White; ex officio: William C. Dennis, Corresponding Secretary, and George A. Finch, Recording Secretary.

Committee for the Extension of International Law: Jesse S. Reeves, Chairman; Edwin M. Borchard, Charles G. Fenwick, Charles Cheney Hyde, Manley O. Hudson, Fred K. Neilsen, Quincy Wright.

The full text of all addresses, a verbatim report of the oral discussions, as well as the minutes of the meetings of the Executive Council and Executive Committee and the financial reports, are printed in the volume of *Proceedings*, which is ready for distribution to all members and others who have sent in the subscription price (\$1.50).

GEORGE A. FINCH.

THE NEW IMMIGRATION LAW AND THE EXCLUSION OF JAPANESE

The Act approved May 26, 1924, to be cited as the "Immigration Act of 1924," is the first formal exclusion act adopted by the United States in respect to Japanese immigrants. A practical, as distinct from statutory, method of exclusion has been in effect since 1908 through the voluntary policy adopted by Japan in pursuance of the "gentlemen's agreement"; but after sixteen years of operation this method has now been superseded.

The terms by which the new policy of exclusion is made effective are concise. Section 13 (c) of the law of 1924 provides that "no alien ineligible to citizenship shall be admitted to the United States." Exceptions are made in favor of government officials, tourists, seamen, and persons coming for purposes of trade, who are not technically "immigrants," and in favor of immigrants previously admitted and returning after temporary absence abroad, ministers of the gospel and college professors who come to carry on their vocation, and students who enter for purposes of study, the latter groups being technically described as "non-quota immigrants." The group of ministers of the gospel and college professors may bring with them their wives and children under eighteen years of age.

As is well known, the naturalization laws of the United States were from the beginning limited to "free white persons," the only subsequent modification being made in 1875 in favor of aliens of African nativity and persons of African descent. After a series of decisions in the lower courts,¹ in which the term "white persons" was interpreted to mean persons of what is popularly known as the "Caucasian race," the Supreme Court of the United States finally decided, on November 30, 1922, in the case of *Ozawa v. United States*,² that one who is "of the Japanese race and born in Japan" was not eligible to citizenship. The exclusion from the United States, therefore, of aliens ineligible to citizenship is as specific in meaning as the exclusion of the Japanese nominatum.

A preliminary question of current interest, although only incidental to the legal issues involved in the new law, is raised by the conduct of Ambassador Hanihara in writing a note of protest to Secretary Hughes on April 11, 1924, while the bill was under discussion by Congress. The ambassador pointed out the existence of the gentlemen's agreement of 1907 and, while not questioning the sovereign right of the United States to regulate immigration, asked of the government "simply that proper consideration ordinarily given by one nation to the self-respect of another." In conclusion the ambassador expressed his realization, shared, as he believed, by Mr. Hughes, of the "grave consequences" which the enactment of the measure retaining the particular provision would bring upon the otherwise happy and mutually advantageous relations between the two countries.

The ambassador's letter was made public by the Secretary of State in an effort to avert legislation which Mr. Hughes had opposed from the start. Instead, however, of accomplishing that object, the letter was interpreted by both houses of Congress as a "veiled threat," with the result that the bill was promptly enacted into law, in the case of the Senate by a vote without roll call.

There is no doubt that as a matter of technical procedure it was in viola-

¹ In *re Saito*, 62 Fed. 126, appears to be the first case in which a Japanese was involved.

² For the text of the decision, see this JOURNAL, January, 1923, p. 151.

tion of diplomatic custom for an ambassador to express his views upon pending legislation, and the suggestion of the "grave consequences" which might result from the passage of the bill added to the breach of good form. On the other hand, apart from the merits of the case made out by Mr. Hanihara, it would seem desirable that the old rule of diplomatic non-interference should be modified to the extent of permitting a friendly expression of views by a foreign government pending the passage of legislation which, it is foreseen, will have unfortunate, even if legally justifiable, consequences. Especially would this seem to be true in the case of a government such as that of the United States, in which the initiative in legislation is in the hands of one department of the government and the general conduct of foreign relations in the hands of another department.

Coming to the technical legal aspects of the exclusion provision, the general principle is accepted that, in the language of Justice Gray, "every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe."³ The general principle would appear to cover not merely a uniform rule applied to all states, but even a discriminatory rule where the grounds for the discrimination are well founded. The equality of states as a principle of law would appear to come into the question only when the conduct of the nation taking such action was purely arbitrary. No issue has been raised as to the discrimination shown in the denial of citizenship to the Japanese under the existing naturalization laws.

Following the passage of the law, the Japanese Ambassador presented to the Secretary of State on May 31st a formal protest against its provisions. The protest called attention to the treaty of commerce and navigation of February 21, 1911,⁴ and, while reserving for a later occasion the technical legal question whether the provisions of the Immigration Act were inconsistent with the terms of the treaty, pointed out that the new legislation was "in entire disregard of the spirit and circumstances that underlie the conclusion of the treaty."

The treaty in question superseded the treaty of November 22, 1894. Article I provides in part:

The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and ships, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

³ *Nashimura Ekiu v. United States*, 142 U. S. 651 (1892).

⁴ For the text, see Charles, *Treaties*, etc., 77, and Supplement to this JOURNAL, Vol. 5 (1911), p. 100.

Article IV of the treaty provides for reciprocal freedom of commerce and navigation, and contains the usual most-favored-nation clause. It should be noted that Section 3 of the new immigration law expressly excepts, as not being technically "immigrants," persons coming within the scope of Article I of the treaty of 1891.

It is difficult to see how even the strictest interpretation of the terms of Article I can be made to include a liberty of Japanese citizens to enter for purposes of permanent settlement and incorporation into the economic and social life of the community as distinct from entry for mere purposes of trade. Considering how vital a matter the regulation of immigration by the United States might become at a later date, it is not to be believed that the government would barter away the right except by the most explicit terms. Any doubt must be resolved in favor of the party alleged to have so bound itself.

Annexed to the signature of the treaty of 1911 was a "Declaration" by which the Japanese plenipotentiary announced that his government was "fully prepared to maintain with equal effectiveness the limitation and control which they have for the past three years exercised in regulation of the emigration of laborers to the United States." The presence of this declaration might, on the part of Japan, be argued to imply a grant by the foregoing treaty of privileges which it was thereby announced Japan would not avail itself of. The argument, however, is seen to be of no weight when consideration is taken of the fact that the negotiation of a treaty of commerce and navigation would have been normally an occasion for reducing the terms of the agreement of 1907 to the form of a convention, and that it was the desire of the United States to spare Japan the humiliation of such a procedure that led to the alternative adoption of the appended declaration. Thus far the United States Department of State has not published the minutes of the "conversations" which attended the negotiation of the treaty.

Apart from the treaty of 1911, what was the force of the "gentlemen's agreement" upon its own merits? The agreement, embodied in a series of diplomatic exchanges between the two governments but not reduced to a formal draft, consisted in a voluntary undertaking on the part of Japan to take administrative measures designed to check the emigration to the United States of Japanese laborers. In return the United States Government was to undertake to recommend to Congress to refrain from resorting to formal exclusion legislation. While for obvious reasons the agreement was not reduced to writing, it would seem that it was none the less a contract to be carried out in good faith on both sides, although lacking in the status of a treaty under the United States Constitution. On its side Japan alleged, in the note of May 31st, "the patient, loyal and scrupulous observance" of the agreement down to the date of the exclusion law. It appears that, from 1908-1923, some 8,681 Japanese have been admitted to

the country, including all classes. Of the 578 entering on an average annually it is claimed by Japan only 146 have been laborers.

Could the agreement be abrogated legally by the United States upon its own unilateral motion? Again, it is difficult to see the force of the Japanese contention. The rule of strict construction precludes the suggestion that an agreement without time limit could be regarded as binding the hands of the United States for an indefinite period, subject only to the willingness of Japan to release the United States from the obligation. Moreover, the agreement was between the Government of Japan and the Department of State, not between Japan and the United States, and it did not pretend to restrain Congress except in so far as the Executive Department might do so by way of recommendation.

On the other hand, the passage of the law of May 26, 1924, quite clearly releases the Japanese Government from any obligations assumed under the "gentlemen's agreement." This result the Japanese Ambassador frankly announced in his note of May 31st, saying that it would henceforth be impossible for Japan to continue the undertaking assumed by the agreement. As a matter of practical administration, it may be noted that under the agreement Japan had refrained from issuing passports to Japanese laborers to go to the continental territory of the United States. Instead of a passport, the Japanese immigrant will now need a consular "immigration visa" issued by a United States consul in Japan, in default of which he cannot enter the United States. President Roosevelt's executive order of March 14, 1907, will still operate to deny admission to Japanese laborers whose passports might read to Canada or Mexico and who might seek to enter the United States from those countries, but Japan will be under no obligation to supplement this measure by a continuation of the "strict control" hitherto exercised over the emigration of Japanese laborers to territory contiguous to the United States.

But if the Japanese protest against the exclusion provisions of the Immigration Act is weak on the side of law, it is strong on the side of common international courtesy and decent neighborly conduct. Between nations, as between citizens of the same state, there are rules of intercourse which, however clearly they may lack the force of legal obligations, are none the less fundamental conditions of friendly relationships. The term "comity" is frequently used in diplomatic intercourse to indicate rules of conduct or methods of procedure which correspond roughly to the conventions of social life within the local community. The Japanese note of May 31st refers to the "ordinary rules of comity" as having been disregarded by the Act of Congress. Whether or not comity in its technical sense is applicable to a case of the present kind, there are at least the canons of good manners and the rule of fair consideration of the effects of one's legal act upon a friendly country. Mr. Hanihara's note of April 11th asked of the United States "simply that proper consideration ordinarily given by one nation

enemy territory, except for requisition under compensation. Articles 46 and 47 of the Hague Regulations of 1899 and 1907 expressly stipulate that "private property may not be confiscated" and "pillage is formally prohibited." Latifi, an English specialist writing on the subject in 1909, felt justified in saying:⁷

Will the conscience of civilized mankind permit a return to what appeared even to the rough Barons who extorted the Great Charter from King John to be too harsh a system, or is the private property of the citizens of the hostile State to remain inviolable within a belligerent's jurisdiction as it practically is in hostile territory under military occupation?

The enormous improvement in the means of communication, and the increased sense of solidarity amongst civilized nations, have made a return to the older principle impossible.

Even during the recent war, as late as 1918, and therefore long after the Trading with the Enemy Acts, the English House of Lords and other courts reiterated the time-honored doctrine that "It is not the law of this country [England] that the property of enemy subjects is confiscated. Until the restoration of peace the enemy can, of course, make no claim to have it delivered up to him, but when peace is restored he is considered as entitled to his property with any fruits it may have borne in the meantime."⁸

Such was the state of the law, based upon the soundest of economic principles, when the Peace Conference met in 1919. To the astonishment of many students of international law, somewhat familiar with the history and reasons for the rule dictating the immunity of private enemy-owned property, there issued from the Conference in the form of Article 297 of the Treaty of Versailles, and embodied also in the other peace treaties, the following provision:

Subject to any stipulations which may be provided for in the present treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging . . . to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present treaty.

The proceeds were to be devoted to the payment of private debts and public reparations, and the enemy country was to compensate its expropriated nationals.

Thus, at one stroke of the pen an institution which was deemed impregnable and fundamental to the existing economic order, and the history

⁷ Latifi, *op. cit.*, p. 48.

⁸ Lord Finlay, now Judge of the Permanent Court of International Justice, in *Stevenson v. Aktiengesellschaft für Cartonnagenindustrie* [1918, H. L.], A. C. 239, 244. See also Lord Haldane in same case, *ibid.*, 247; Lord Parker in *Daimler Co. v. Continental Tyre and Rubber Co.* [1916], 2 A. C. 307, 347; Lord Birkenhead in *Fried Krupp A. G. v. Ocronera* (1917), 88 L. J. Ch. 304, 309; Cardozo, J. in *Techt v. Hughes* (1920), 229 N. Y. 222, 128 N. E. 185.

and economic basis of which could hardly have been adequately realized by the treaty-makers, was temporarily, at least, undermined. This cannot be deemed a service to mankind, nor in the long run, to the participating countries. If, as is commonly assumed, one of the principal functions of law is to insure the security of acquisitions, one cannot fail to remark how seriously that function has been impaired. Indeed, this reversion on momentary provocation to a primitive custom may well justify the conclusion that probably few of the hard-won victories of civilization establishing the supremacy of law over violence bear any assurance of permanence. For a temporary gain of a few millions within easy reach, the clock has been turned back several hundred years and there has been revived an ancient barbaric practice which is likely to do incalculable harm before a wiser generation will undo it.

It is believed that few provisions of the treaties of peace are more ominous for the future than this measure for the confiscation of privately-owned enemy property within the jurisdiction. In a day when international business depends upon the mobility of capital as never before, foreign investment and property, which for over a century had been protected by law, must now depend for their security, as in ancient times, upon the preponderance of force.⁹ The effect of the revolutionary doctrine adopted at Versailles has not yet been fully realized by the trade and banking community, but it seems quite obvious that there can be no serious reduction in armaments in any independent country so long as this subversive doctrine prevails in international affairs. It is a cancer in the system.

Here it is only proper to point out a defense of the treaty practice of confiscation advanced by a British publicist.¹⁰ This writer observes that the older writers conceded the legitimacy of confiscating private property; that the Hague Convention forbidding it was not binding in the late war, because all the belligerents had not ratified it; that the recent practice was not outright confiscation, but rather, provisional or delayed confiscation; that unless the private property of enemy citizens was taken, British creditors would—he asserts it as a fact—have been unable to collect their debts from private German, Austrian, Hungarian, Bulgarian and Turkish debtors; that if someone had to suffer, it was better for the enemy citizens to lose than for one's own nationals; that if the enemy citizens have not been compensated, that is the fault of the enemy governments and not of the British and other confiscating governments; and that inasmuch as most foreign investors and traders are persons of large means and necessarily exert considerable influence on foreign policy, there would be, in the realization that war would

⁹ A striking illustration of the correctness of this opinion is found in the Treaty of Lausanne, coming after the Turkish victory at Smyrna. In that treaty (Article 65) the private property of Turks in Allied countries, confiscated under the Treaty of Sèvres, is released from sequestration or confiscation and restored to its owners.

¹⁰ Mr. Claude Mullins in *Proceedings of the Grotius Society*, Vol. 8, p. 89.

sacrifice their foreign investments in enemy countries, a wholesome influence for the prevention of war. It is also true that other writers have sought solace or justification for Article 297 in that provision of the treaties by which the enemy states undertook to compensate their nationals who had been despoiled of their property in Allied countries.

The obvious answer to this argument is that evidence of the antiquity of a particular practice is no evidence that it is now legal;¹¹ that the Hague Convention was not a new rule of law, but merely codified a rule a century old; that post-war confiscation is as effective and spoliative as confiscation *durante bello*; that there is no evidence that British creditors would have lost their money, but even if they had, to take property from A to pay the debt of B or of his nation is revolutionary in its effects and implications; that confiscation of private property, as an incident of war, may afford an incentive to war rather than a deterrent, and that the realization that the security of private property and investment abroad depends not on law but on force will tend to increase and not diminish armaments and, coincidentally, the chances of war.

Finally, it may be said that a committee of the British Board of Trade has recognized the fact that the provision relegating the expropriated owners to their own governments for compensation was a nearly futile gesture, in view of the incapacity of those governments to meet the obligation and the disability, if not unwillingness, of the Allied Governments to enforce it.¹² The committee has therefore recommended compensation for a considerable number of those ex-enemies who have been deprived of their property by application of Article 297; but while the principles adverted to in the report challenge the wisdom of the whole proceeding, the application of the recommendations is limited to those few whose property has not yet been liquidated. It is therefore likely that Great Britain, which, as a trading and investing nation, must realize the disquieting effects of the doctrine she has been misled into espousing, will go much further in the compensation of the aliens affected. Indeed, the realization of what is involved was made clear when British bankers, demanding of the Russian negotiators for a loan that

¹¹ See the acute observation of John Bassett Moore in this connection:

"It is true that in certain early writers who reiterated the stern rules of the law of Rome, sweeping generalizations may be found in which the right is asserted on the part of enemies to seize all property and confiscate all debts. The same writers, upon the same authority, assert the lawfulness of treating all subjects of the belligerent as enemies, and as such of killing them, including women and children. These generalizations, even at the time when they were written, neither expressed nor purported to express the actual practice of nations, and it is superfluous to declare that the law of the present day is not to be found in them; for, with the change in the practice of nations, growing out of the advance in human thought, the law also has changed." Moore's Digest of Int. Law, VII, 306.

¹² "Special Report of the Committee appointed by the Board of Trade to advise upon applications for the release of property of ex-enemy aliens in necessitous circumstances." London, 1924. Cmd. 2046. 15 pp.

foreign property must be made safe in Russia "in all circumstances," were met by the reported inquiry whether this was the custom in England. The force of the Russian reply at Genoa was probably not lost on British statesmen.

We in the United States have a tradition in this matter. At a very early day in our history, we committed ourselves to the wise and enlightened policy of regarding the private property of citizens of enemy states as immune and inviolable. Under the treaty of January 8, 1802, the treaty provision of 1783 restoring British creditors to their legal rights having proved ineffective, we paid to Great Britain some three million dollars to make good acts of confiscation against British subjects practised by some of the States in the Revolutionary War.

Article X of the Jay Treaty of 1794 provided:

Neither the debts due from individuals of one nation to individuals of the other, nor shares, nor monies, which they have in the public funds, or in the public or private banks, shall ever in any event of war or national differences be sequestered or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective Governments, should ever be destroyed or impaired by national authority on account of national differences and discontents.

It was in defense of that provision of the treaty that Alexander Hamilton wrote two of his famous Camillus Letters. Hamilton's argument is believed to be unanswerable, and it is hardly conceivable that his sound principles will ever be repudiated by the country. He said:

The right of holding or having property in a country always implies a duty on the part of its government to protect that property, and to secure to the owner the full enjoyment of it. Whenever, therefore, a government grants permission to foreigners to acquire property within its territories, or to bring and deposit it there, it tacitly promises protection and security.

There is no parity between the case of the person and goods of enemies found in our country and that of the persons and goods of enemies found elsewhere. In the former there is a reliance upon our hospitality and justice; there is an express or implied safe conduct; the individuals and their property are in the custody of our faith; they have no power to resist our will; they can lawfully make no defense against our violence; they are deemed to owe a temporary allegiance; and for endeavoring resistance would be punished as criminals, a character inconsistent with that of an enemy. To make them a prey is, therefore, to infringe every rule of generosity and equity; it is to add cowardice to treachery.

Moreover, the property of the foreigners within our country may be regarded as having paid a valuable consideration for its protection and exemption from forfeiture; that which is brought in commonly enriches the revenue by a duty of entry. All that is within our territory, whether acquired there or brought there, is liable to contributions to

the treasury, in common with other similar property. Does there not result an obligation to protect that which contributes to the expense of its protection? Will justice sanction, upon the breaking out of a war, the confiscation of a property which, during peace, serves to augment the resources and nourish the prosperity of a state?

The property of a foreigner placed in another country, by permission of its laws, may justly be regarded as a deposit, of which the society is the trustee. How can it be reconciled with the idea of a trust, to take the property from its owner, when he has personally given no cause for its deprivation?¹³

In his Camillus Letter XVIII, he added:

No powers of language at my command can express the abhorrence I feel at the idea of violating the property of individuals, which, in an authorized intercourse in time of peace has been confided to the faith of our government and laws, on account of controversy between nation and nation. In my view, every moral and every political sense unite to consign it to execration.

Hamilton expressed what has been deemed to be the permanent policy of the United States. Numerous treaties have reaffirmed it. If it was sound in an agricultural age, it is far more valid and essential in this industrial era. At every international conference in which the subject was discussed, we exerted our influence in behalf of the sanctity of private property and even sought adherence, with some limited success, to the doctrine of immunity of private property at sea.¹⁴

Under the Trading with the Enemy Act of October 6, 1917, the United States sequestered the property belonging to citizens of Germany, Austria and Hungary. It was understood that this was done solely to prevent the hostile use of the property against the United States during the war, and the Alien Property Custodian was designated as a "common-law trustee."¹⁵ Though sales were permitted, first to preserve the trust and then, as alleged by one custodian, to avoid making profits for the absent enemy, the trust nature of the relationship has never ceased. The Supreme Court of the United States¹⁶ and some of the lower federal courts have therefore, it is believed, committed a serious error of a fundamental nature in regarding the sequestration as a "capture" in exercise of the power of Congress "to make rules concerning captures on land and water."

¹³ See Works of Alexander Hamilton (Lodge's edition), Vol. V, pp. 412 *et seq.* See the extended quotations from Hamilton and the references to treaties concluded by the United States in Moore, John Bassett, *International Law and Some Current Illusions* (New York, Macmillan, 1924), pp. 14 *et seq.*

¹⁴ See the instructions of Secretary of State Hay to the American delegates at the First Hague Conference. (Scott, *Instructions and Reports of United States Delegates to Hague Peace Conference*, p. 9.)

¹⁵ Cong. Record, 65th Cong. 1st sess. 4844 *et seq.* Sen. Rep. 113, 65th Cong. 1st sess.; H. R. Rep. 85, 65th Cong. 1st sess.

¹⁶ *Stoehr v. Wallace* (1920), 255 U. S. 239.

This can be most effectively demonstrated by quoting the words of John Bassett Moore in his recent work *International Law and Some Current Illusions*, a book which should be read by every American citizen. Speaking of the policy of Congress under the Trading with the Enemy Act, he says:

This was not, nor did it purport to be, an exercise by Congress of its constitutional power "to make rules concerning captures on land and water." The word "capture" is in law a technical term, denoting the hostile seizure of places, persons and things. Men in arms are "captured," but a non-combatant is seized or arrested. A defended city, if taken, is said to be "captured"; if undefended, it is "occupied." Property is said to be "captured," only when seized, in a hostile sense, under claim of forfeiture or confiscation. These distinctions are very elementary. The idea of provisionally holding enemy property in custody in order to prevent its use in the enemy interest is by no means new. In England, it is at least as old as Magna Carta. No one understood the act of Congress to contemplate a hostile seizure. The very terms of the act preclude such an interpretation. It merely authorized the provisional holding of the property in custody, and appropriately styled the official who was to perform this function, the Alien Property Custodian.¹⁷

Unfortunately, the first Alien Property Custodian, in what may charitably be characterized as an excess of zeal, and in spite of the official announcement of the government that "there is no thought of a dissipation or confiscation of property thus held in trust," departed somewhat from the functions of a trustee by selling out many of the trusts at inadequate prices and for the avowed purpose of injuring the owners. Many of these sales were made long after the armistice, when hostilities at least should have ceased. The first report of the Alien Property Custodian can only be deprecated by Americans interested in the record and future of their country and in the preservation of the institution of private property. No more brilliant exposition of the activities of the early Alien Property Custodians can be presented than that by John Bassett Moore in the work already cited.¹⁸ He says:

In the original statute the function of the alien property custodian was defined as that of a trustee. Subsequently, however, there came a special revelation, marvelously brilliant but perhaps not divinely inspired, of the staggering discovery that the foreign traders and manufacturers whose property had been taken over had made their investments in the United States not from ordinary motives of profit but in pursuance of a hostile design, so stealthily pursued that it had never before been detected or even suspected, but so deadly in its effects that the American traders and manufacturers were eventually to be engulfed in their own homes and the alien plotters left in grinning possession of the ground. Under the spell engendered by this agitating apparition,

¹⁷ Moore, J. B., *International Law and Some Current Illusions*, p. 21.

¹⁸ *Ibid.*, p. 22.

and its patriotic call to a retributive but profitable war on the malefactor's property, substantial departures were made from the principle of trusteeship.

Fortunately for American history, the United States has not, except for the activities just alluded to, adopted a policy of confiscation with respect to the property taken over by the Alien Property Custodian. The property is still held, however, by virtue of the Knox-Porter Resolution, embodied in the Treaty of Berlin, until Germany and the other ex-enemy countries make "suitable provision for the satisfaction of" the claims of American citizens. It is unfortunate that such a provision was adopted in an American treaty, for it challenges the security of foreign private property. It was accepted, according to the late Senator Knox, to overcome the objection of certain members of Congress to the adoption of the Peace Resolution; but Senator and ex-Secretary of State Knox openly declared that he regarded our further retention of the property as not "decent." Congress has retained full control of the matter, and may dispose of the private property as it sees fit. In the Winslow Act of March 4, 1923, \$10,000 as a maximum was returned to each owner, thus disposing of perhaps ninety per cent of the trusts; so that the remaining funds held as security are the property of but a limited number of persons.

In the case of the Austrian property, an unusual situation is presented. The bulk of the Austro-Hungarian private property, owned by persons who were fortunate enough to reside in the succession states, has been returned under the Act of June 5, 1920. The only property still held as security for the obligations of the former Austro-Hungarian Empire belongs to the few persons, owning more than \$10,000, who were so unfortunate as to reside in what is now the truncated Republic of Austria. A considerable amount of the entire property still retained, moreover, has come by inheritance or otherwise, into the ownership of persons who were either never, or had ceased before January 10, 1920, to be citizens of ex-enemy states. This is anomalous.

No one has better expressed the underlying reasons for holding inviolate the private property of foreigners under all circumstances than Secretary of State Hughes in his address at Philadelphia, November 23, 1923. He declared:

A confiscatory policy strikes not only at the interests of particular individuals but at the foundations of international intercourse, for it is only on the basis of the security of property, validly possessed under the laws existing at the time of its acquisition, that the conduct of activities in helpful cooperation, is possible. . . . Rights acquired under its laws by citizens of another State, [a State] is under an international obligation appropriately to recognize. It is the policy of the United States to support these fundamental principles.

There can be little doubt that these principles, though uttered with Russia in mind, apply equally to the foreign sequestered property in the

United States. It is regrettable that it has not yet been restored to its owners. There must be feasible ways of securing the payment of the American claims, without violating our national traditions. For example, it has not been made clear why we cannot share, to the limited extent required, in the payments to be effected by Germany under the Dawes Report. It would seem that the United States should be able to obtain the consent of the Allies to permit Germany to pay us the moderate sums involved, without participating in "sanctions." Payment and enforcement are separable. Even payment by Congress of the American claims against long-term German bonds would be preferable to touching the private sequestered property. Simple respect for our past and a prudent regard for our future, dictate that we cannot, as an inviting and investing nation, jeopardize the security of foreign private property, both of aliens in the United States and of Americans abroad, by the adoption of so destructive and shortsighted a policy as the confiscation of private property for the discharge of a public indebtedness. In the words of Hamilton, it "would disgrace the Government of the country and injure its true interests."

Some comfort may be derived from the profound words of John Bassett Moore who, as chairman of the Commission of Jurists to consider and report upon the revision of the rules of warfare, said, in opening the conference at the Hague in December, 1922:

I deem it to be inconceivable that a generation accustomed to boast that it is the heir of all the ages, in the foremost files of time, should consciously relinquish the conception that all human affairs, in war as well as in peace, must be regulated by law, and abandon itself to the desperate conclusion that the sense of self-restraint, which is the consummate product and the essence of civilization, has finally succumbed to the passion for unregulated and indiscriminate violence.

EDWIN M. BORCHARD.

THE INDIVIDUAL AND INTERNATIONAL LAW

Philosophy and law have suffered much harm because of the desire of men for rigid classification and definition. There is a naïve yearning to circumscribe carefully a subject and to place it safely within the confines of a letter-file. Men insist on simplicity in their thinking: they abhor the complex and the uncertain. As a wise Frenchman once observed, "One defines a subject in order to avoid the necessity of understanding it."

The law of nations has been thus treated: it has been narrowly restricted and rigidly defined. Various assertions of principles have been so boldly affirmed and reiterated by successive publicists that they have become almost axiomatic. An Attorney-General or a Secretary of State declares that the three-mile limit of maritime jurisdiction has been universally fixed,

and the Supreme Court solemnly insists that this is true though unable to define what is meant by "territorial waters." It is enough to say that the matter has been settled: rigidity in the law is to be preferred to reason.

No proposition perhaps has received such general assent as that international law applies only between states, and that a man has no international rights. By this method of definition and classification the publicists often attempt to relegate international private law to the sphere of "conflict of laws," to employ the Anglo-American phraseology. Problems of domicile, of personal status, and of nationality itself, that inevitably give rise at times to diplomatic controversy, are ignored. The facts of international society must be made to conform to the categories of the publicists. According to their concept, the law of nations is the dictator, the moralist, the preacher, the rigid mould into which the interests and rights of men must be poured.

Now it would not seem very difficult to demonstrate in a simple way that the proposition that man is the "object" of law with no other rights than flow from his nationality is unsound both in principle and practical experience. A pirate is the enemy of all mankind. He may be summarily executed without any thought concerning his nationality. A slave bound in chains is entitled to his freedom the world over. No one for a moment would think to ask what his political allegiance might be. Piracy and slavery are both proscribed by the law of nations. The question of national classification is in no way involved.

The case of the *Paquette Habana* and of the *Lola*, small fishing vessels owned by Spanish nationals and captured during the war in 1898 by American gunboats, is very pertinent in this connection. The Supreme Court of the United States held:

This review of the precedents and the authorities on the subject appears to us abundantly to demonstrate that at the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men, and of the mutual convenience of belligerent states, that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war.¹

It is of peculiar interest to note that here was a case where no treaty or positive international engagement was involved; where no interposition by the Spanish Government in behalf of the owners of these vessels was permissible or necessary. The court recognized their individual right to plead their own cause. By the law of nations their rights as individuals without respect to their national affiliations were completely recognized, and their vessels were restored.

Still other instances might be cited, but these three concerning pirates,

¹177 U. S. 677, quoted in *Cases in International Law*, by Scott, p. 12.

slaves, and fishermen may serve to illustrate the falsity in actual experience of the assertion of publicists that men are merely the "objects" of international law, and that, like straying cattle, they have no other rights than what their owners may be able to establish in their behalf! It is enough for our immediate purpose to note these serious breaches in the circumvallation or fragile screen erected by some of the authorities in international law.

The question that naturally, and somewhat impatiently, arises is: How did such a theory concerning the rights of the individual ever originate and find such strong credence? The answer would seem clearly to be found in the speculations of certain of the early political theorists concerning sovereignty, notably of Bodin, who thought in terms of supreme power. Grotius, though somewhat vague in his political theorizing on this subject, evidently regarded sovereignty as supreme political power, (*potestas civilis*), which he identified on the whole with the person of ruling kings and princes. They expressed towards all other monarchs the interests and rights of sovereign states, whether territorial or human. Any other conception of the law of nations conceding to individuals definite rights of their own would have been confusing and inadmissible at a time when men possessed their belongings and their lives only on the sufferance of their sovereign lords. The concept of men under a "social compact" as free sovereign lords, from whom all sovereignty was derived, was necessarily slow in forming and in gaining acceptance. Not till the nineteenth and the twentieth centuries did the idea of a truly democratic state, based on the interests and the rights of the individual, emerge triumphantly. Today the doctrine of "self-determination" is sweeping away (perhaps in a dangerous manner) the archaic remains of personal sovereignty. Men everywhere are beginning to realize the truth that the state exists, not as an end in itself, but as the means to their own individual welfare and happiness. Political institutions are being subjected to severe tests. The administration of justice is increasingly difficult and fails to command complete popular confidence. Law itself is being subjected to the most critical analysis. Men are demanding that it should be based on principles of common sense to serve adequately the changing needs of men in all the varied fields of international intercourse.

The time would now seem to have arrived for a thorough reappraisal and revision of the principles of the law of nations in order to regulate properly all the complicated relationships in international society and to facilitate justice within the family of nations. The democratic principle must be logically applied to international affairs as well as to domestic. The conception of a sovereign state from which all rights flow must give way to the conception that international law itself derives its ultimate sanction and respect from the sovereign people. The "rights of man" must be fully and practically recognized in his pursuit of a livelihood, and of the gratification of his legitimate intellectual and spiritual aspirations throughout the world.

The alien, and even the *heimatlos*, no longer accepts the old Roman maxim

that "a strange air makes a man unfree." He believes that, whether as a member of a community whose right to existence, independence, and to intercourse has been duly recognized, or as a constituent member of international society as a whole, he has certain basic, inalienable rights that must be respected, notably of his own person, of property, of livelihood, of thought, of conscience, and of justice in general. He insists that international common law now concedes definite standards of rights and obligations in all these respects which no "civilized" community may be permitted to disregard. He believes in the right to appeal to any tribunal, domestic or international, for the protection of these rights.

The fact that the government of the state to which a man may own allegiance declines for reasons of expediency, policy, or otherwise to champion his rights in no way implies that he possesses none. He may have no agent to look after his interests; he may be unable to employ the ablest legal advocates: the law still exists for the very purpose of protecting his rights. The tribunals are open to him and the judges are there to see that justice is administered irrespective of his backing.

We have been woefully misled by this archaic theory of men as mere "objects" of law. We have exalted governments as if they were the fount and source of the rights of man. With rare exceptions, governments are no longer sovereign: they are the agents and representatives of sovereign citizens whose interests they must zealously serve. Scattered throughout international society are diplomats and consuls to assist their fellow citizens in a multitude of ways. Their rights, however, should never be made to depend upon the courtesy, the judgment, the whims, or prejudices of any officials, whether diplomatic or otherwise. The courts should everywhere be open to all law-abiding men. The very Court of International Justice at The Hague must ultimately be opened to the free access of all who may be denied justice in the courts of any territorial jurisdiction. Special international tribunals, undoubtedly, by reason of practical exigencies, will have to be created to deal with such matters as pecuniary claims where the principle of liability is admitted, or with technical questions arising in the vast field of international private law.

And the law itself in many uncharted depths and shallows, particularly concerning the responsibility of states for torts, or for contractual claims, must be formulated definitely and comprehensively. This can best be done through such international conferences as were recommended by the Commission of Jurists that drew up the Statute for the Permanent Court of International Justice. It may not be permitted to depend upon the arbitrary judgment of national governments, nor should any denial of justice be allowed because of the absence of controlling principles and rules. It should not depend upon the idiosyncrasies of any judge or group of judges seeking to create principles out of their own inner consciousness.

Governments are the proper agencies for formal international intercourse

and may accomplish great things for the advancement of the interests and welfare of all mankind. They must remember, however, that they are not the source of rights. Their justification for existence throughout international society consists in the success with which they aid men in the pursuit of happiness and in the perfection of those relations which it is the object of the law of nations to foster and safeguard.

PHILIP MARSHALL BROWN.

OPINION OF COMMISSION OF JURISTS ON JANINA-CORFU AFFAIR

The controversy between Greece and Italy over the assassination of the Italian General Tellini and other officials of the international boundary commission, at Janina, near the Albania border of Greece, and the subsequent occupation of Corfu by Italian forces, was settled by agreement of the parties through the mediation of the League of Nations and the Conference of Ambassadors in September, 1923.¹ The fact, however, that the settlement was reached through acceptance by the parties of the decision of the Conference of Ambassadors at Paris meant that it gave no definite answer to the various legal contentions advanced during the discussion in the League Council. These contentions involved interpretations of the Covenant and points of general international law of unusual interest. It is therefore gratifying that after settlement of the controversy they were submitted to a commission of jurists as abstract questions. This commission, selected by the states represented on the Council of the League, reported on March 13 to the Council, which unanimously approved the report, though representatives of Sweden and Uruguay thought that the answer given to the fourth question was not as explicit as desirable in distinguishing the cases in which coercive measures were and were not legitimate.²

The problems with which the Commission of Jurists dealt arose out of (1) the contention of Italy that "any discussion or any step taken by the League of Nations (in the Janina-Corfu affair) would be out of place owing to its clear incompetence";³ (2) the contention of Greece that the Italian occupation of Corfu was "outside the terms of the Covenant,"⁴ and (3) the assertion by the Conference of Ambassadors that "it is a principle of international law that States are responsible for political crimes and outrages committed within their territory."⁵ The first two problems involved an

¹ See editorial comments, this JOURNAL, Vol. 18, pp. 98-108.

² Monthly Summary of the League of Nations, Vol. 4, pp. 53-54, April, 1924.

³ Minutes of the 26th Session of the Council, League of Nations, Official Journal, Vol. 4, p. 1287, November, 1923.

⁴ *Ibid.*, p. 1281. See also p. 1277.

⁵ *Ibid.*, p. 1294. See also statement of M. Politis of Greece, p. 1288, and of M. Hanotaux of France, p. 1297.

interpretation of Articles XII and XV of the Covenant, while the last concerned a general principle of international law.

The League Council had considerable difficulty in framing questions which would cover these problems because of the insistence of the Italian representative that they should not invite an answer which would reflect directly upon her conduct in a dispute which had been settled.⁶ Finally, however, with the aid of a commission of jurists, the following five questions were framed:⁷

Question 1. Is the Council, when seized at the instance of a Member of the League of Nations, of a dispute submitted in accordance with the terms of Article 15 of the Covenant by such a Member as "likely to lead to a rupture," bound, either at the request of the other party or on its own authority, and before inquiring into any point, to decide whether in fact such description is well founded?

Question 2. Is the Council, when seized of a dispute in accordance with Article 15, paragraph 1, of the Covenant at the instance of a Member of the League of Nations, bound, either at the request of a party or on its own authority, to suspend its enquiry into the dispute when, with the consent of the parties, the settlement of the dispute is being sought through some other channel?

Question 3. Is an objection founded on Article 15, paragraph 8, of the Covenant the only objection based on the merits of the dispute on which the competence of the Council to make an enquiry can be challenged?

Question 4. Are measures of coercion which are not meant to constitute acts of war consistent with the terms of Articles 12 to 15 of the Covenant when they are taken by one Member of the League of Nations against another Member of the League without prior recourse to the procedure laid down in these articles?

Question 5. In what circumstances and to what extent is the responsibility of a State involved by the commission of a political crime in its territory?

A long debate then ensued as to the authority which should be requested to answer the questions. Lord Robert Cecil of Great Britain, Mr. Branting of Sweden, and others wished an advisory opinion from the Permanent Court of International Justice, but this was opposed by M. Salandra of Italy and M. Hanotaux of France. M. Salandra objected to the submission of questions 3 and 4, and M. Hanotaux to the submission of question 4, on the grounds that the questions were not purely legal, but partly or mainly political; that for the settlement of political questions governments must have final say, and that even an advisory opinion of the court would be difficult to overrule because of the great prestige of that institution.⁸ They

⁶ Minutes of the 26th Session of the Council, League of Nations, Official Journal, Vol. 4, pp. 1320-1321.

⁷ *Ibid.*, pp. 1328, 1350. See also Records of the 4th Assembly, 18th Plenary Meeting, Sept. 28, 1923, and Monthly Summary of the League of Nations, Vol. 3, p. 215, October, 1923.

⁸ League of Nations, Official Journal, Vol. 4, pp. 1329, 1338, 1339.

were less afraid of opinions expressed by a commission of jurists especially appointed by the governments concerned. Lord Robert Cecil agreed that the court could not decide political questions, that consequently merely an advisory opinion should be sought, and that final decision would rest with the Council or Assembly. He also agreed that "the authority of the Permanent Court is greater than that of any body that can be created *ad hoc*," and for this very reason thought its opinion should be asked.⁹

There are objections, of course, as I am sure all my colleagues will realize, to bodies created *ad hoc*. I do not know what procedure would be adopted; a body of jurists might be appointed by the Council, possibly on the advice of the Secretariat, or we might even get some assistance from the Court; but, however these jurists were obtained, I am afraid one must recognize that, in the case of all arbitral or other bodies collected for a particular purpose, there is always a tendency to regard them as having been chosen because of the opinions they are likely to give. In other words, you do not get the same guarantee of absolute impartiality and disinterestedness that you do from a Court which exists permanently and to which you submit certain questions. . . .

Lord Robert's preference for resort to impartial legal authority was not, however, shared by all his colleagues. M. Salandra thought that "logically, in view of the character of the function of the Permanent Court of International Justice, we could not refer to it questions which, . . . are of a constitutional nature, that is, questions which would result in an authentic interpretation of the Covenant. Such an interpretation is reserved to the sovereign power—I mean the Council or the Assembly."¹⁰

Doubtless much of this debate was mere camouflage to conceal the immediate interest of Italy and France in preventing any authoritative criticism of coercive measures short of war in view of the Corfu and Ruhr occupations. Nevertheless, it disclosed genuine differences on the method which should prevail in defining the competence of League organs. M. Salandra, in insisting that the Covenant should be interpreted by the political authorities of the League, was but reflecting the practice in his own and most continental European countries, whereas Lord Robert Cecil's preference for judicial interpretation was in harmony with the traditions of England and more particularly of the United States. Some members of the Council without any immediate interest in supporting the French and Italian view were inclined to recognize the value of flexibility in developing the League Constitution. Thus, M. de Mello-Franco of Brazil, though recalling the part which courts had played in the development of many written constitutions, thought:

The important organization of the League of Nations, created by the Covenant, which is its constitution, must follow the path of concilia-

⁹League of Nations, Official Journal, Vol. 4, pp. 1338, 1340, 1342.

¹⁰*Ibid.*, p. 1339.

tion at the outset if it is to attain the ideal which its creators had in view. In the early stages of its existence, the Covenant must be applied in a spirit of great conciliation; we cannot have recourse to the rigid and vigorous methods which are employed in applying written constitutions, the development of which is already very advanced, thanks to the precedents which they have been able to follow and the judicial decisions which have been taken.

The League of Nations, on the other hand, is only beginning to apply its constitution, the Covenant, which—as all the nations of America confidently hope—will become in the future the law of all the States of the world, and will allow the final rule of peace, law and justice to be established.¹¹

At the suggestion of Viscount Ishii of Japan, it was finally decided to submit the questions to a special commission of jurists, one selected by each member of the Council, together with the Director of the Legal Section of the Secretariat, only, however, after Lord Robert Cecil had obtained unanimous consent to the following declaration, which, though taken in terms from the Covenant, in effect repudiates the Italian challenge to the League's competence and sustains his own answer to question 3:

Any dispute between Members of the League likely to lead to a rupture is within the sphere of action of the League, and if such dispute cannot be settled by diplomacy, arbitration or judicial settlement, it is the duty of the Council to deal with it under Article 15 of the Covenant.¹²

The jurists met at Geneva from January 18 to 24,¹³ and gave answers to the five questions which were unanimously approved by the Council on March 13.¹⁴

The first question was answered in the negative.

I. The Council, when seized at the instance of a Member of the League of Nations of a dispute submitted, in accordance with the terms of Article 15 of the Covenant, by such a Member as "likely to lead to a rupture," is not bound, either at the request of the other party or on its own authority, and before enquiring into any point, to decide whether in fact such description is well founded.

The Council may at all times estimate the gravity of the dispute and determine the course of its action accordingly.

¹¹ League of Nations, Official Journal, Vol. 4, p. 1343. See also *ibid.*, p. 1332, and Wright, "The Understandings of International Law," this JOURNAL, Vol. 14, p. 565.

¹² *Ibid.*, pp. 1345, 1346, 1351.

¹³ The jurists were Adatci, Japan, Chairman; Lord Buckmaster, British Empire; Buero, Uruguay; de Castello Branco Clark, Brazil; Fromageot, France; Rolandi Ricci, Italy; Ünden, Sweden; Van Hamel, Director of the Legal Section of the League Secretariat; de Villa Urrutia, Spain; de Visscher, Belgium. See Monthly Summary of the League of Nations, Vol. 4, p. 2, February, 1924.

¹⁴ For replies, see Monthly Summary of the League of Nations, Vol. 4, p. 53, April, 1924.

This justifies the Council's consideration of the Italian-Greek dispute in spite of the Italian contention that it had no jurisdiction because the dispute was "not likely to lead to a rupture."¹⁵

The second question was answered in the main affirmatively.

II. Where, contrary to the terms of Article 15, paragraph 1, a dispute is submitted to the Council on the application of one of the parties, where such a dispute already forms the subject of arbitration or of judicial proceedings, the Council must refuse to consider the application.

If the matter in dispute, by an agreement between the parties, has already been submitted to other jurisdiction before which it is being regularly proceeded with, or is being dealt with in the said manner in another channel, it is in conformity with the general principles of law that it should be possible for a reference back to such jurisdiction to be asked for and ordered.

This justifies the Council's consideration of the Italian-Greek dispute in spite of the Italian contention that it had no jurisdiction because the dispute was being "satisfactorily settled by diplomacy."¹⁶ It also justifies the Council's acquiescence in the settlement of the dispute by the Conference of Ambassadors at Paris. The Council's function is not to assert its authority, but to assist in any means of settlement agreeable to the parties. The answers to questions 1 and 2 seem to mean that formally the Council is barred from considering a dispute only by the fact of submission to arbitration or judicial settlement. The likelihood of the dispute leading to a rupture or the probability of its being settled by negotiation, mediation, or other means, are questions which cannot be raised by the disputants to bar the Council's jurisdiction, though at its own discretion the Council should refrain from making a recommendation if some other peaceful procedure in process shows prospects of success.

The third question was answered in the main affirmatively.

III. Where a dispute likely to lead to a rupture is submitted to the Council, on the application of one of the parties, in accordance with the provisions of Article 15, paragraph 1, the case contemplated in paragraph 8 of Article 15 is the only case in which the Council is not to enquire into the dispute.

In particular the reservations commonly inserted in most arbitration treaties cannot be pleaded as a bar to the proceedings.

The Commission considers it desirable to observe that, where the case arises, the Council should, in determining the course of its action, have regard to international engagements such as treaties of arbitration or regional understandings for securing the maintenance of peace.

¹⁵ See statement by M. Salandra of Italy, League of Nations, Official Journal, Vol. 4, p. 1288.

¹⁶ See statements by M. Salandra, *ibid.*, pp. 1279, 1314; by Lord Robert Cecil, pp. 1279-1280, 1298, 1307-1308; by M. Hymans of Belgium, p. 1299; and by M. Guani of Uruguay, p. 1300. See also this JOURNAL, Vol. 18, p. 107.

This denies the Italian contention that the League cannot consider questions relating to the execution of the peace treaties unless all the interested parties ask for such consideration.¹⁷ It means that the Council is barred from considering a dispute on account of its subject matter only when it finds that it "arises out of a matter which by international law is solely within the domestic jurisdiction" of a party so claiming, and it is made clear that the allegation that a dispute involves "national honor" or "vital interests" of one of the parties does not, as was suggested during the Council debate,¹⁸ put a dispute in that category. If, however, the dispute is covered by an arbitration treaty between the parties or by a regional understanding like the Monroe Doctrine, the Council, though not barred from discussing the dispute, must, as required by Article 21 of the Covenant, respect such procedures for settlement.¹⁹ Practically this would seem to mean that where American countries have agreed upon a mode of settlement of a dispute among themselves, the League should at once withdraw, as it did in the Panama-Costa Rica and the Chile-Peru boundary disputes.

The answer to the fourth question is undoubtedly the least satisfactory.

IV. Coercive measures which are not intended to constitute acts of war, may or may not be consistent with the provisions of Articles 12 to 15 of the Covenant, and it is for the Council, when the dispute has been submitted to it, to decide immediately, having due regard to all the circumstances of the case and to the nature of the measures adopted, whether it should recommend the maintenance or the withdrawal of such measures.

The jurists apparently admit that all self-help prior to submission to the League is not barred by the Covenant.²⁰ War is clearly barred by Article 12 prior to such submission, but retorsions, reprisals, occupations of territory, etc., are not necessarily war in the legal sense.²¹ Such measures short of war may be used by members of the League prior to League consideration of the dispute, but only if of a character and under circumstances

¹⁷ See statement by M. Salandra, League of Nations, Official Journal, Vol. 4, pp. 1279, 1288.

¹⁸ See statement by M. de Mello-Franco of Brazil, *ibid.*, p. 1330.

¹⁹ See statement by M. Guani of Uruguay, *ibid.*, p. 1329.

²⁰ See official Italian statement, *ibid.*, p. 1288, and elaborate argument by M. Salandra of Italy, p. 1314. The opposing view was vigorously expressed by M. Branting of Sweden, *ibid.*, pp. 1306, 1316. See also this JOURNAL, Vol. 18, p. 107.

²¹ Professor Charles de Visscher, one of the jurists who prepared the report, has informed the writer that in his opinion Article 12 bars resort to all measures of coercion characterized by the use of force, because such measures in themselves always endanger the maintenance of peace. Measures of forcible coercion, it is true, have not always in the past led to war, but only because the state coerced is physically weak. Relative strength or weakness makes no difference in the rights of states; therefore, any act of coercion which, if applied against a great power, would inevitably lead to war, is legally the inauguration of war, whatever the relative strength of the states, and so is barred by the Covenant.

which will assure their approval by the Council.²² Thus the Greek contention that the League rather than the perpetrator should describe coercive measures seems to be sustained.²³ "I am aware," said M. Politis, "that in an official communiqué published, I believe, yesterday at Rome, the acts of violence which have just been committed against Greece are described as pacific acts of a temporary character. It does not seem to me that it lies with the author of an act to describe it. Acts must be judged objectively, and it is for the Council to judge the acts regarding which Greece has the right to complain."

Articles 10 and 16 of the Covenant are not directly referred to in this answer, but apparently they also do not bar all measures of coercion short of war. Article 10 merely bars external aggression against the territorial integrity and political independence of states, and it seems clear that legitimate defense or punishment cannot be so characterized. In fact this distinction was recognized by President Roosevelt when he said in regard to the Monroe Doctrine: "We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American Power."²⁴ Article 16, like Article 12, bars resort to war, not to measures short of war, and this article, though referred to by the Greek representative, was not made the basis of the Greek protest. "The Greek government," said M. Politis, "was accordingly inclined to profit by the doubt which might exist as to the character of the acts committed by the Italian Government in order not to take the initiative in asking for the application of Article 16."²⁵

During the debate in the Council, doubt was expressed by Lord Robert Cecil whether coercive measures short of war were considered legitimate by international law even apart from the Covenant, though he recognized that such measures had frequently been employed.²⁶ The answer to question 4 seems to imply that they cannot be considered illegitimate under all circumstances. The Covenant clearly says nothing which increases the propriety of such acts; consequently if they are legitimate under certain circumstances for parties to the Covenant, they are *a fortiori* legitimate under like circumstances for states bound only by customary international law.

²² This seems to be the logical interpretation of the answer, but Professor de Visscher informs the writer that, in approving the answer, he interpreted the term "dispute" in the third line to refer, not to the dispute as to the propriety of the coercive measures, but to the original dispute out of which the acts of coercion arose. Thus the answer, in his opinion, does not mean that the Council has power to pass upon the propriety of the coercive measures (which he believes are always prohibited by the Covenant if they involve the use of force), but merely upon the expediency, from the standpoint of settling the original dispute, of the maintenance or withdrawal of such measures which exist in fact.

²³ *Ibid.*, p. 1277.

²⁴ Message to Congress, December 3, 1901.

²⁵ League of Nations, Official Journal, Vol. 4, pp. 1277-1278.

²⁶ *Ibid.*, pp. 1323, 1339.

The jurists replied as follows to the fifth question.

V. The responsibility of a State is only involved by the commission in its territory of a political crime against the person of foreigners, if the State has neglected to take all reasonable measures for the prevention of the crime and the pursuit, arrest and bringing to justice of the criminal.

The recognized public character of a foreigner and the circumstances in which he is present in its territory entail upon the State a corresponding duty of special vigilance on his behalf.

This sustains the contention of Greece that under international law "if a crime is committed within the territory of a country, the only duty of that country is faithfully to enforce the law of the country for the punishment of the crime," and that an international responsibility arises only on proof of the allegation "that the government of the country has failed in its duty."²⁷ It also supports M. Hanotaux's comment on the telegram received from the Conference of Ambassadors, which asserted as "a principle of international law that states are responsible for political crimes and outrages committed within their territory," that this would not be true unless the words "for the repression of" were inserted after "responsible."²⁸

It seems clear under international law that responsibility of states for crimes against foreigners on their territory is relative, not absolute. This holds true whether the motive for the crime is personal or political. State responsibility depends on the degree of negligence of the government, and the standard "all reasonable measures for prevention" suggested by the jurists does not appear to differ from that of "due diligence," "means at disposal" or others familiar to students of international law.²⁹ The statement that more rigorous protection is due to foreigners of recognized public character is also supported by practice and text writers.³⁰

While these answers will not excite the enthusiasm of internationalists who hoped that the League would put an end to all violence in international affairs, they do show a healthy appreciation of international law. The commission of jurists clearly recognizes the League as an evolution of, not as a revolution from, the family of nations as it has existed under customary international law. But nevertheless they recognize that an advance has been made. They insist that the procedure for peaceful settlement defined

²⁷ League of Nations, Official Journal, Vol. 4, p. 1289.

²⁸ *Ibid.*, p. 1297. See also statement by M. Guani of Uruguay, p. 1324.

²⁹ See Borchard, *Diplomatic Protection of Citizens Abroad*, pp. 213, 217. The Inter-Allied Commission of Inquiry on responsibility for the murder of General Tellini proceeded on this theory of responsibility. In its final report of September 30, 1923, it found that Greece had been negligent in not suppressing the press campaign against General Tellini and in not warning him of the anti-Italian feeling in that region before the crime; in not making use of all available evidence in the judicial inquiry; and in not transmitting information immediately on discovering the crime which might have prevented escape of the criminals. See Levermore, *League of Nations, 4th Year Book*, pp. 402-409.

³⁰ *Ibid.*, pp. 216, 223.

in the Covenant imposes obligations upon members of the League which can not be evaded even by a great Power. It seems improbable that a member of the League will again deny the competence of the Council to inquire into a future international dispute involving, or in danger of involving, violence, when such dispute has not been submitted to arbitration or judicial settlement.

QUINCY WRIGHT.

REMISSION OF THE CHINESE INDEMNITY

On May 21, 1924, the President approved a joint resolution of Congress providing for the remission of further payments of the annual instalments due to the United States on the indemnity from China under the protocol of September 7, 1901, which settled the claims growing out of the Boxer disturbances. This joint resolution was approved almost sixteen years to the day from the time when the first step in this generous action of the Government of the United States was initiated by the approval of the joint resolution of May 25, 1908.

The original amount of the indemnity bond given to the United States by China on December 15, 1906, was \$24,440,778.81 payable in irregular annual instalments over a period extending until 1940, with interest at 4% per annum. This sum represented the fractional share allotted to the United States by the diplomatic representatives of the Powers at Peking on June 14, 1902, from the bond for the lump sum of 450,000,000 taels delivered on October 13, 1901, by the Chinese plenipotentiaries to the dean of the diplomatic corps at Peking in accordance with Article 6 of the protocol of September 7, 1901. The Chinese Government subsequently signed fractional bonds for the amounts due to each government.

In asking Congress for authority to modify the Chinese bond so as to enable the United States to return a portion of the indemnity, President Roosevelt explained in his message of December 3, 1907, that "It was the first intention of this government, at the proper time, when all claims had been presented and all expenses ascertained as fully as possible, to revise the estimates and account, and as proof of sincere friendship for China voluntarily to release that country from its legal liability from all payment in excess of the sum which should prove to be necessary for actual indemnity to the United States and its citizens."

The joint resolution of May 25, 1908, authorized the President to modify the bond from China so as to limit the total payment to the sum of \$13,655,492.69, with interest at 4% per annum, and to remit the remainder of the indemnity at such times and in such manner as he shall deem just. An executive order issued by President Roosevelt on December 28, 1908, gave his consent to the modification of the amount of the bond and directed that a

certain proportion of the original annual instalments due under it from the year 1909 to the year 1940 be returned to China.¹

It seems that this method of "remitting" the cancelled portion of the indemnity to China was adopted, instead of a simple cancellation of a part of the principal debt and the proportionate reduction of subsequent annual payments, because the Chinese Government had already made arrangements to collect the annual revenues necessary to pay the full amount of the indemnity and deemed it to be not expedient, for reasons of internal administration, to attempt to modify the arrangements after they had been put into operation. It was therefore considered by China to be in her best interests not to reduce the revenues assigned to the payment of the indemnity, but to pay over to the United States the original amounts annually due and then to have the United States return a part of each annual instalment to the Chinese Government.

While the joint resolution of Congress of May 25, 1908, placed no restrictions on the use to be made of the sums thus remitted to the Chinese Government, the question of their use was carefully considered between the two governments and determined before any actual remission took place. At the time that he recommended a remission of the indemnity, President Roosevelt in his message of December 3, 1907, stated that the United States "should help in every practical way in the education of the Chinese people, so that the vast and populous Empire of China may gradually adapt itself to modern conditions. One way of doing this is by promoting the coming of Chinese students to this country and making it attractive to them to take courses at our universities and higher educational institutions." When the Chinese Government was informed of the passage of the joint resolution of May 25, 1908, its note of appreciation, sent on July 14, 1908, made reference to this desire of President Roosevelt and stated that "it has now been determined that from the year when the return of the indemnity begins 100 students shall be sent to America every year for four years, so that 400 students may be in America by the fourth year. From the fifth year and throughout the period of the indemnity payments a minimum of 50 students will be sent each year." The Chinese Foreign Office at the same time requested the American Government to render assistance in the elaboration of the plans for carrying out the scheme, and on August 3, 1908, Secretary of State Elihu Root sent a set of proposed regulations to the Chinese Government through the American Minister at Peking.²

The monthly payments of the remitted portions of the indemnity have been made at China's request to the Consul General of the United States at Shanghai and by him indorsed over for the maintenance of the college of Tsing Hua, a training school for students going to America established by the

¹ For an account of the collection and first remission of the Boxer indemnity, see editorial in this JOURNAL, Vol. 2, pp. 160-170.

² The regulations are printed in this JOURNAL, Vol. 3, pp. 455-457.

Chinese Government in accordance with Section VI of the regulations drafted by Secretary Root. This college is known in China as the "American Indemnity College," and the remitted funds support it as well as meet the expenses of the Chinese students in the United States.

Of the principal amount retained by the United States under the joint resolution of May 25, 1908, \$2,000,000 was reserved by the resolution for the payment of certain outstanding claims of Americans against the indemnity fund which had not been adjusted at the time of the passage of the resolution. These claims were subsequently paid, and the balance of the \$2,000,000, amounting to \$1,175,835.64 remitted to China under authority of the joint resolution of 1908.

The joint resolution of May 21, 1924, recites that the unpaid balance of the indemnity fund amounts to \$6,137,552.90, and proposes that it be remitted "as a further act of friendship" and "in order further to develop the educational and other cultural activities of China." The President is accordingly authorized, in his discretion, to remit all further annual installments of the indemnity, at such times and in such manner as he shall deem just. The text of the joint resolution is as follows:

Joint Resolution to provide for the remission of further payments of the annual installments of the Chinese indemnity.³

Whereas by authority of a joint resolution of Congress approved May 25, 1908, the President of the United States was authorized to remit unto China the sum of \$11,961,121.76 of the Boxer indemnity fund accredited to the United States, which sum the President on December 28, 1908, duly remitted and which, at the request of China, was specified to be used for educational purposes; and

Whereas it is deemed proper as a further act of friendship to remit the balance of said indemnity fund amounting to \$6,137,552.90 in order further to develop the educational and other cultural activities of China: Now therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized, in his discretion, to remit to China as an act of friendship any or all further payments of the annual installments of the Chinese indemnity due under the bond received from China pursuant to the protocol of September 7, 1901, as modified by Executive order on the 28th day of December, 1908, pursuant to the authority of the joint resolution of Congress approved May 25, 1908, for indemnity against losses and expenses incurred by reason of the so-called Boxer disturbances in China during the year 1900, such remission to begin as from October 1, 1917, and to be at such times and in such manner as the President shall deem just.

Approved, May 21, 1924.

In acknowledging the receipt of the foregoing joint resolution, transmitted by the Secretary of State on June 14, 1924, the Chinese Minister at Washing-

³ Public Resolution No. 21, 68th Congress.

CURRENT NOTES

THE CONSOLIDATION OF THE DIPLOMATIC AND CONSULAR SERVICES OF THE UNITED STATES

At the last session of Congress an act was passed, and approved by the President on May 24, 1924, providing for the reorganization and improvement of the foreign service of the United States. The Act, known as H. R. 6357, is identical with the "Rogers Bill" passed by the House of Representatives during the last session of the Sixty-Seventh Congress, but which failed of passage through the Senate because of the legislative congestion in the closing hours of that Congress.¹

The scope of the bill is described in the favorable report to the House of Representatives made on February 5, 1924,² by its sponsor, the Honorable John Jacob Rogers, of Massachusetts, as follows:

1. The adoption of a new and uniform salary scale with a modest increase in the average rate of compensation.

2. An amalgamation of the Diplomatic and Consular Service into one foreign service on an interchangeable basis.

3. Representation allowances for the purpose of eliminating or at least of lessening, the demands on the private means of ambassadors and ministers. If we take this step, we shall render it practicable to appoint to those positions on merit the best men without regard to considerations which, in a democracy, are surely irrelevant.

4. A retirement system based upon the principles of the civil-service retirement and disability act of May 22, 1920, but administered entirely separately therefrom.

Mr. Wilbur J. Carr, Director of the Consular Service, whose appointment as an Assistant Secretary of State under the provisions of the law has recently been announced, praised the bill when he appeared in its favor before the Committee on Foreign Relations in the following unstinted terms:

The second measure in all the history of this country in relation to the foreign service, and by far the most important and most far-reaching.

. . . There has not been anything like it since the Government began to exist. In my judgment . . . it will furnish the basic structure of the organization for your foreign service for 50 years, a bill on which you can build any kind of a foreign service you please, a bill on which you can provide for ministers and ambassadors, secretaries, and consuls in the light of what you believe to be responsive to the opinion of the country.

¹ See the editorial on the Rogers Bill, by the Honorable Robert Lansing, in this JOURNAL, Vol. 17 (1923), pp. 285-287.

² H. Rept. No. 157, 68th Cong. 1st Sess.

SETTLEMENT OF FOREIGN DEBTS TO THE UNITED STATES

Two more European governments have been added to that of Great Britain, now making a list of three, which have taken definite steps to honor their signatures to the promissory notes given by them to the United States for large sums of money borrowed to enable them to prosecute the war or to feed their peoples after the war. The World War Foreign Debt Commission, created under the Act of Congress approved February 9, 1922, as amended by the Act of February 28, 1923, signed an agreement with the Republic of Finland on May 1, 1923, and with the Kingdom of Hungary on April 25, 1924, which provided for the funding of the indebtedness of each to the United States. Both agreements were approved by the President of the United States and transmitted to Congress for its approval under the law creating the Commission. Congress authorized the settlement of the indebtedness of Finland by an Act approved March 12, 1924, and of the indebtedness of Hungary by an Act approved May 23, 1924, both acts incorporating the terms of the agreements previously negotiated by the Commission. The settlement with Finland follows the exact terms of the settlement previously made with the British Government, and the settlement with Hungary does likewise, with a single exception, which will be noted.

The debt of Finland was for the most part incurred for the purchase of foodstuffs from the United States in 1919 and 1920 and that of Hungary was incurred in connection with food purchased for relief purposes in 1920. The amount of the indebtedness of the respective countries was computed as follows:

<i>Finland</i>	
Principal amount of obligations to be funded.....	\$3,231,926.17
Less—Payment in cash made by Finland March 8, 1923,	
Interest accrued thereon from June 30, 1919, and June 1,	
1920, respectively, to Dec. 15, 1922, at the rate of	
4½ per cent per annum.....	\$1,027,389.10
on account of interest.....	300,000.00
	727,389.10
Total principal and interest, accrued and unpaid, as of Dec. 15, 1922.	\$9,009,315.27
To be paid in cash by Finland, May 1, 1923.....	9,315.27
Total indebtedness to be funded into bonds.....	\$9,000,000.00
<i>Hungary</i>	
Principal amount of the obligation to be funded.....	\$1,685,835.61
Interest accrued thereon from May 29, 1920, to Dec. 15, 1923, at the rate of	
4½ per cent per annum.....	253,917.43
Total principal and interest, accrued and unpaid, as of Dec. 15, 1923.	\$1,939,753.04
To be paid in cash by Hungary April 25, 1924.....	753.04
Total indebtedness to be funded into bonds.....	\$1,939,000.00

The repayment of the loans is to be provided by the issue of bonds to the United States by each debtor government for the total sum of its indebtedness. The bonds of Finland are to be dated December 15, 1922, and those of Hungary December 15, 1923. The bonds are to mature serially on each December 15th in the succeeding years for sixty-two years in amounts fixed in an accompanying schedule of payments. The bonds are to bear interest at the rate of 3% per annum for the first ten years and after that date at the rate of $3\frac{1}{2}$ % per annum. The debtor has the privilege of deferring the payment of principal not more than two years from its due date, but the payment falling due in the next succeeding year cannot be postponed for more than one year from the date of its maturity, with restrictions on postponement of future payments unless the unpaid instalments have been paid. For the first five years of the life of the bonds, one-half of the interest accruing may be funded into bonds with maturities similar to those of the original bonds. Either country has the right to pay off an additional amount of the principal of the bonds on any interest date upon ninety days' notice. Both countries also have the option of making payments of their interest or principal in bonds of the United States issued after April 6, 1917.

The exception in the agreement with Hungary was made because the obligations of Hungary held by the United States for the relief loan of 1920 are a first lien upon all its assets and revenues, and, in view of the serious financial difficulties in which the Government of Hungary is now involved making a further loan imperative for reconstruction purposes, the settlement with Hungary provides that the present lien of the American Government shall be subordinated to that of the proposed reconstruction loan in the same manner as similar loans were subordinated to the reconstruction loan recently floated by the Government of Austria. The provision of the law approving the settlement on this point reads:

The payment of the principal and interest of the bonds shall be secured in the same manner and to the same extent as the obligation of Hungary which is to be funded: *Provided, however*, That all or any part of such security may be released by the Secretary of the Treasury on such terms and conditions as he may deem necessary or appropriate in order that the United States may coöperate in any program whereby Hungary may be able to finance its immediate needs by the flotation of a loan for reconstruction purposes, if and when substantially all other creditor nations holding obligations similar to that held by the United States which is to be funded, to wit, Denmark, France, Great Britain, Holland, Norway, Sweden, and Switzerland, shall release to a similar extent the security enjoyed by such obligations.

The Secretary of the Treasury shall be authorized to decide when this action has been substantially taken.

THE "WELTRECHT"

A new legal periodical, devoted primarily to the field of the conflict of laws and comparative law and the law derived from the treaties of peace, has

made its appearance in Germany. It is called *Weltrecht*, and is the organ of the Rechtsinstitut fuer Weltverkehr of the German Industrial Advisory Council. It numbers among its editors Dr. Felix Meyer, editor of the well-known *Blaetter fuer Vergleichende Rechtswissenschaft*, and author of notable volumes on the law of checks and bills of exchange; Dr. Franz Scholz, one of the German judges on the mixed arbitral tribunals under the Treaty of Versailles; Dr. Ferdinand Schweighoffer, Privy Councillor; Dr. C. H. Huberich, formerly of Stanford University and now practising in Europe; and Dr. Arthur Nussbaum, Professor of Law at Berlin University.

The first number of the periodical, for April, 1924, contains a few general articles on comparative law and reports on recent legislation in several European countries. Its discussion of the decisions of the Mixed Arbitral Tribunals, which promises to be one of the regular features, should make the magazine of special interest to students of international law.

THE "REVUE DE DROIT INTERNATIONAL"

The science of international law has recently been enriched and its means of exposition enlarged by the founding of a new journal at Geneva, Switzerland, entitled *Revue de Droit International, de Sciences Diplomatiques, Politiques et Sociales*. The review was founded in July, 1923, by Antoine Sottile, of the University of Geneva, who is also its Editor-in-Chief. The new *Revue* is published quarterly, and two issues for the year 1923 and one issue for the year 1924 have made their appearance. The language is French, but it appears that other languages may be employed, there being an article in the second and third numbers in Spanish. The subscription price is 35 francs in Switzerland and 40 francs in the countries of the Universal Postal Union.

In welcoming this new collaborator in the field of international law, the AMERICAN JOURNAL OF INTERNATIONAL LAW joins with Professor Fauchille, the Director of the *Revue Générale de Droit International Public*, in wishing in his preface to the first number of the *Revue de Droit International*, "to our young sister, long life and prosperity."

SCHOOL OF INTERNATIONAL RELATIONS AT JOHNS HOPKINS UNIVERSITY

Upon the initiative of a committee of gentlemen residing in New York City, headed by the Honorable Franklin D. Roosevelt, and with the approval of the University authorities, a project has been launched for the establishment of a permanent post-graduate School of International Relations at Johns Hopkins University, to be named after the late Walter Hines Page, the American war-time Ambassador at London. It is proposed that the school will systematically carry forward research into the underlying facts and conditions of international life, including international law, international trade, economic relations, racial psychology, the technique of international intercourse, and diplomatic custom; in brief, as the public state-

ment of the trustees says, "the fundamentals that create international discord or promote international comity." The trustees express the hope that in the course of time the proposed school may "assist materially in providing the world with a body of digested information upon which men of good will of all nations may agree as to its truth and from which, as a common ground of thinking, they may work more intelligently toward policies making for international right and understanding."

Trustees for establishing a fund have been selected and they have issued an appeal for general public support of the project in the form of contributions to a capital sum of \$1,000,000, the income of which it is estimated will be sufficient to found and maintain the school. The trustees are as follows: Edwin A. Alderman, Julius H. Barnes, Van Lear Black, Gen. Tasker H. Bliss, Edward W. Bok, Roland W. Boyden, Robert S. Brookings, John J. Carty, Harry Chandler, H. L. Corbett, John W. Davis, Charles W. Eliot, W. H. P. Faunce, John H. Finley, Carter Glass, Mrs. Herbert Hoover, E. M. House, Vernon Kellogg, Mrs. W. Everit Macy, Henry Morgenthau, Adolph Ochs, George Foster Peabody, Franklin D. Roosevelt, Albert Shaw, Rear Admiral William S. Sims, Gen. George Owen Squier, Henry L. Stimson, Charles F. Thwing, William Allen White, George W. Wickersham, Owen D. Young.

Communications may be addressed to Mr. Herbert L. Gutterson, 111 Broadway, New York City.

FELLOWSHIPS IN INTERNATIONAL LAW

Fellowships in International Law for the academic year 1924-25 have been awarded by the Division of International Law of the Carnegie Endowment for International Peace to the following successful candidates:

Teachers Fellowships: Norman Alexander, University of New Hampshire; Edward C. Wynne, Washington College of Law; Olaf H. Thormodsgard, St. Olaf College; Robert R. Wilson, Austin College; J. H. Toelle, University of Maine; Bessie C. Randolph, Randolph-Macon Woman's College; Harry Swain Todd, Waynesburg College.

Students Fellowships: Norman MacKenzie, Harvard University; Wadsworth Garfield, Harvard University; Brooks Emeny, Princeton University; Hobart R. Coffey, University of Michigan.

These fellowships were established in 1917 for the purpose of providing an adequate corps of teachers competent to give instruction in international law and related subjects, as an aid to the colleges and universities in extending and improving the teaching of those subjects, which are daily becoming increasingly of more interest and importance in the conduct of international affairs. An average of ten fellowships have been provided each year. Some eighty Fellows have already studied under them and quite a few are already holding teaching positions in the educational institutions of the United States. The fellowships are awarded in April of each year

and applications are received up to April 15th. Anyone interested in the fellowships may obtain an application blank and other information from the Division of International Law of the Carnegie Endowment for International Peace, 2 Jackson Place, Washington, D. C.

THE ACADEMY OF INTERNATIONAL LAW AT THE HAGUE

The Academy of International Law at The Hague having been successfully inaugurated during the summer of 1923, will hold its second term during the summer of 1924. The term will last nine weeks divided into two periods, the first period from July 14th to August 12th and the second period from August 13th to September 12th. Each period will include thirteen courses of lectures. The main subject is to be international law, taught only in relation to peace and excluding the laws of war. During each of the two periods, main courses will be given on the historical development and general principles of international law, both public and private, while a certain number of special lectures will be devoted to carefully defined subjects, selected according to the special competence of professors and, as far as possible, from amongst current legal international problems.

The teaching corps will be made up of professors from twelve different European and American countries, including Russia, the United States, Great Britain, Germany, France, Holland, Switzerland, Greece, Belgium, Venezuela, Italy, and Czechoslovakia. The North American professors are Jesse S. Reeves of the University of Michigan, who will lecture during the first period on the subject of "The Structure of the International Community," and Philip Marshall Brown of Princeton University, who will lecture during the second period on the subject of "Good Offices, Mediation and Conciliation as Means of Regulating International Disputes."

The courses at the Academy are open to all those who, already possessing some knowledge of the elements of international law, desire to improve that knowledge. No fees are charged either for attendance at the courses, the lectures, or the seminars, or for access to the library of the Palace of Peace at The Hague, in which building the Academy holds its sessions. Anyone wishing to attend the courses should apply to the Secretary of the Managing Board at The Hague for admission, giving his name, nationality, occupation and address. Information may also be obtained at the office of the Carnegie Endowment for International Peace, 2 Jackson Place, Washington, D. C., under whose auspices the Academy was founded and is maintained.

THIRD PAN-AMERICAN SCIENTIFIC CONGRESS

The Third Pan-American Scientific Congress, which was scheduled to convene in Lima, Peru, on November 16, 1924, has been postponed to December 20, 1924, in the same city. The Congress will be in session a fortnight. The American Society of International Law has been invited by the Organizing Committee to appoint one or more official delegates, to pre-

sent collected papers in behalf of the Society, and the individual collaboration of the members of the Society is also asked. The President of the Society now has under consideration the designation of delegates, pursuant to the request of the Executive Committee of the Society.

The Congress will be divided into nine sections. The seventh section will deal with public and private international law. The president of this section is Dr. Mariano Ignacio Prado y Ugarteche, Dean of the Faculty of Jurisprudence. The regulations for the Congress issued before its postponement provided that papers for it should be received up to October 1, 1924, and should be accompanied by a résumé not exceeding 1,500 words in length. The official languages of the Congress will be Spanish, French, English and Portuguese.

A coöperating committee has been appointed in the United States, of which Dr. Leo S. Rowe, Director General of the Pan-American Union at Washington, is the president. Further information may be obtained from him.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD FEBRUARY 16, 1923-MAY 15, 1924
(With reference to earlier events not previously noted.)

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *B. I. I. I.*, Bulletin de l'Institut Intermédiaire International; *Bd. of trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cur. Hist.*, Current History (New York Times); *D. O.*, Diario oficial (Brazil); *E. G.*, Eidgenossische gesetzsammlung (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe, L'Europe Nouvelle*; *Evening Star* (Washington); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal Officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. Q. B.*, League of Nations, Quarterly Bulletin; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation (N. Y.)*; *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetzblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *R. R.*, American Review of Reviews; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

September, 1923

- 21 BELGIUM—LUXEMBOURG. Agreement signed relating to exchange of teachers and students. Text: *Monit.*, May 2, 1924, p. 2317.

December, 1923

- 13 AUSTRIA—HUNGARY—ITALY. Agreement regarding debts of former Austro-Hungarian monarchy signed at Rome, April 6, 1922, promulgated in Italy. Text: *G. U.*, Feb. 21, 1924, p. 846.
- 13 AUSTRIA—ITALY. Five treaties, signed April 6, 1922, promulgated in Italy: (1) Payment of debts. (2) Pensions. (3) Extradition. (4) Mutual protection of nationals. (5) Execution of civil and commercial decisions. Texts: *G. U.*, Feb. 19, March 11 and 15, 1924, pp. 818, 1106 and 1165.
- 13 ITALY—POLAND. Agreement of April 6, 1922, relating to debts and credits, promulgated in Italy. Text: *G. U.*, Feb. 19, 1924, p. 820.
- 13 ITALY—SERBIA. Five treaties signed at Rome on April 6, 1922, promulgated by Royal decree in Italy: (1) Agreement relating to

December, 1923

- debts and credits. (2) Extradition treaty. (3) Treaty for protection of nationals. (4) Treaty for execution of decisions relating to civil and commercial matters. (5) Convention relating to pensions. Texts: *G. U.*, Feb. 19, 22, and March 11, 1924, pp. 820, 866 and 1107.
- 15 CZECHOSLOVAKIA—ESTHONIA. Commercial treaty signed in Prague. *Commerce Reports*, April 14, 1924, p. 122.
- 17-27 FRANCE—GREAT BRITAIN. Agreement reached by exchange of notes, extending to French zone of Morocco provisions of Anglo-French agreement of 1899 relative to consular visas for certificates of origin. *G. B. Treaty series*, no. 11 (1924). Cmd. 2054.
- 19 to Jan. 2, 1924 CZECHOSLOVAKIA—GREAT BRITAIN. Notes exchanged respecting accession of certain British dominions and India to agreement of Jan. 31, 1923, relative to commercial travellers' samples. *G. B. Treaty series*, no. 14 (1924). Cmd. 2074.
- 21 GREAT BRITAIN—NEPAL. Treaty of friendship, together with note respecting importation of arms and ammunition into Nepal, signed at Katmandu. Text: *G. B. Misc. series*, no. 5 (1924). Cmd. 2112.
- 22 FRANCE—URUGUAY. Convention for final cancellation of loan made to France by Uruguay in 1918 signed in Montevideo. *P. A. U.*, April, 1924, p. 410.

January, 1924

- 9 to Apr. 2 MILITARY CONTROL COMMISSION. In note of Jan. 9, German government contended that duties of Inter-Allied Commission of Control did not involve further visits to military stations. On Mar. 5, Conference of Ambassadors replied, mentioning five categories of operations not yet completed. Text: *Temps*, March 10, 1924, p. 1. *N. Y. Times*, March 6, 1924, p. 4. German reply of April 2 to Allied demand of March 5 for inquiry into military status of Germany, proposed that military control be turned over to League of Nations. *N. Y. Times*, April 3, 1924, p. 4. Summary: *Times*, April 3, 1924, pp. 13 and 14.
- 18 MEXICO—NICARAGUA. Convention on exchange of diplomatic correspondence, ratifications of which were exchanged on Feb. 21, 1923, promulgated in Mexico. *P. A. U.*, June, 1924, p. 628.
- 21 GREAT BRITAIN—JAPAN. Agreement for mutual recognition of loadline certificates signed at London. *G. B. Treaty series*, no. 12 (1924). Cmd. 2055.

January, 1924

- 26 AUSTRIA—TURKEY. Treaty of amity and commerce signed. *Commerce Reports*, March 31, 1924, p. 863.

February, 1924

- 3 GREECE—PERSIA. Treaty of friendship, commerce and shipping, signed Oct. 16, 1861, denounced by Persia, to expire May 3, 1924. *Commerce Reports*, May 26, 1924, p. 538.

- 4 GREAT BRITAIN—NICARAGUA. Commission, appointed to execute Harrison-Altamirano Treaty of April 19, 1905, on cession by Great Britain to Nicaragua of the Mosquito Coast, began hearings of complaints from the Mosquito Indians and others. *P. A. U.*, June, 1924, p. 628.

- 4 to Apr. 26 LEAGUE OF NATIONS. REDUCTION OF ARMAMENT COMMISSION. Held 9th session at Geneva, Feb. 4-7, with representative of United States present, to discuss new convention to replace convention of St. Germain for control of traffic in arms and ammunition. Draft convention drawn up at Paris session of first Sub-Commission from March 24 to 28. On April 26 a special sub-commission met at Prague to examine Colonel Carnegie's draft treaty on private manufacture of arms and munitions. *L. N. M. S.*, March-April, 1924, pp. 32, 52, and 74.

- 9-12 BELGIUM—FINLAND. Provisional agreement regulating economic relations arranged by exchange of notes. Text: *Monit.*, March 26, 1924, p. 1526. *Commerce Reports*, May 12, 1924, p. 392.

- 9 GREAT BRITAIN—SPAIN. By exchange of notes the arbitration treaty of Feb. 27, 1904, was prolonged for an additional five years. *Ga. de Madrid*, Mar. 5, 1924, p. 1175. *G. B. Treaty series*, no. 16 (1924). Cmd. 2077.

- 11-16 FRANCE—SPAIN. Arbitration treaty of Feb. 26, 1904, renewed for another period of five years, by exchange of notes. *J. O.*, May 8, 1924, p. 4159.

- 13 to May 5 HONDURAS. Failure of political factions to reach agreement for restoration of constitutional government caused the United States to sever diplomatic relations on Feb. 13. Marines were landed at various points from Feb. 29-Mar. 8. *Cur. Hist.*, April, 1924, 20: 125. President Coolidge issued proclamation on March 22 prohibiting export of arms or war munitions. *Press Notice*, Mar. 22, 1924. Additional marines landed on March 19. By March 31, entire country was in hands of revolutionists. *Cur. Hist.*, May, 1924, 20: 302. On April 23, Sumner Welles, American commissioner, arranged peace conference at Amapala on April 30

February, 1924

to which governments of Costa Rica, San Salvador, Nicaragua and Guatemala accepted invitations. Formal convention signed and peace officially restored on May 5. *Cur. Hist.*, June, 1924, 20: 488. *N. Y. Times*, May 6, 1924, p. 1.

14-25 NAVAL EXPERTS CONFERENCE. Held in Rome to examine project of League of Nations on reduction of armament and make plans for holding international conference to extend to all nonsignatory states the principles of the Washington Naval Agreement of Feb. 6, 1922. *L. N. M. S.*, March 15, 1924, p. 33. *Cur. Hist.*, April, 1924, 20: 141.

16-18 BALTIC CONFERENCE. Representatives of Latvia, Esthonia, Finland, Poland and Lithuania met at Warsaw. *Times*, Feb. 19, 1924, p. 11.

16 and Mar. 5 GREAT BRITAIN—SWEDEN. Air navigation treaty signed at Stockholm. Text: *G. B. Treaty series*, no. 19 (1924). Cmd. 2138.

17 LITHUANIA—SWEDEN. Commercial agreement signed. *Commerce Reports*, April 28, 1924, p. 258.

19 MEXICO—UNITED STATES. Ratifications exchanged at Mexico City of special claims convention, signed Sept. 10, 1923. Text: *U. S. Treaty series*, no. 676.

19 to May 15 IMMIGRATION RESTRICTION. On Feb. 19, Secretary Hughes sent letter to Senate Committee on Immigration on H. R. 6540, with opinion as to its effect upon relations of the United States with Japan. Text: *Press Notice*, Feb. 20, 1924. On March 17, bill was replaced by H. R. 7995, reported on March 24 and 27. (*H. Rp. 350, 68th Cong.*) On April 10, Japanese Ambassador, Hanihara, protested against passage of bill as conflicting with "Gentlemen's Agreement." Text: *Press Notice*, April 11, 1924. House passed amended bill on April 12. Senate rejected amendment continuing "Gentlemen's Agreement" and, on April 15, adopted exclusion amendment. Text: *N. Y. Times*, April 16, 1924, p. 1. On April 17, Hanihara explained intent of his note of April 10, to which Hughes replied. Text: *Adv. of peace*, May, 1924, p. 309. On April 18, Senate adopted amendment to H. R. 7995, by substituting S. 2576 for all words after enacting clause. Text: *Cong. Rec.*, April 18, 1924, p. 6868. Conference reports in both House and Senate on May 8 and 15. *Cong. Rec.*, May 8 and 15, 1924, pp. 8424 and 8816.

20 ITALY—SWITZERLAND. Exchanged ratifications of treaty of commerce signed at Zurich, Jan. 27, 1923. *E. G.*, April 2, 1924, p. 105.

February, 1924

- 21 AUSTRIA—SOVIET RUSSIA. *De jure* recognition given to Russia by Austria. *Wash. Post*, Feb. 22, 1924, p. 2. *Russian Information*, March 8, 1924, p. 149.
- 21 ESTHONIA—LATVIA. Provisional commercial agreement signed at Reval on Nov. 1, 1923, ratified by exchange of documents. *Commerce Reports*, Mar. 31, 1924, p. 863.
- 21-22 FRANCE—GREAT BRITAIN. Letters exchanged between Poincaré and MacDonald on reparation and other matters made public. Text: *N. Y. Times*, Mar. 3, 1924, p. 1.
- 21 FRANCE—GREECE. Commercial arrangement signed at Paris. Text: *J. O.*, Feb. 27, 1924, p. 2018.
- 21 LUSITANIA CLAIMS. Judge Parker, umpire of German-American Mixed Claims Commission, handed down decision that Germany must pay reparations amounting to about one million dollars in fifty-seven cases, representing first group of claims. *Wash. Post*, Feb. 22, 1924, p. 1.
- 22 BELGIUM—GREAT BRITAIN. Exchanged ratifications at London of convention respecting legal proceedings in civil and commercial matters signed at London, June 21, 1922. *G. B. Treaty series*, no. 13 (1924). Cmd. 2069.
- 22 ITALY—SERBIA. Fiume treaty of Jan. 27, 1924, promulgated in Italy. Text: *G. U.*, Feb. 22, 1924, p. 889. Ratifications exchanged. *Ga. de Prague*, Feb. 27, 1924, p. 1.
- 27 to May 8 ST. LAWRENCE WATERWAYS. Correspondence between British and American governments concerning project, with names of personnel of Joint Engineering Boards and National Advisory Committees of Canada and the United States made public. *Press Notice*, Mar. 14 and May 9, 1924.
- 29 BRAZIL—SPAIN. Temporary commercial agreement reached by exchange of notes. *Commerce Reports*, April 7, 1924, p. 59.

March, 1924

- 1 CZECHOSLOVAKIA—ITALY. Commercial treaty providing reciprocal tariff concessions signed. *Ga. de Prague*, Mar. 12, 1924, p. 1. *Commerce Reports*, April 7, 1924, p. 59.
- 1 CZECHOSLOVAKIA—ITALY. Exchanged ratifications of Juridical-financial convention and of Treaty of Commerce and Navigation, both of which were signed at Rome, Mar. 23, 1921. Text: *G. U.*, Mar. 10, and Apr. 10, 1924, pp. 1089, 1449.
- 1 LATVIA—UNITED STATES. Ratifications exchanged at Riga of extradition convention of Oct. 16, 1923. *U. S. Treaty series*, no. 677.

March, 1924

- 1 MEXICO—UNITED STATES. Ratifications exchanged in Washington of General Claims Convention of September 8, 1923. Text: *U. S. Treaty series*, no. 678.
- 3 FRANCE—UNITED STATES. Ratifications exchanged in Washington of arbitration agreement of July 19, 1923, extending for another five years, the arbitration convention of 1908. *U. S. Treaty series*, no. 679.
- 3 GERMANY—TURKEY. Treaty of peace and friendship signed at Angora. *Times*, Mar. 6, 1924, p. 11.
- 3 TURKEY. Angora Assembly voted abolition of Caliphate and expulsion from Turkey of the Caliph and all members of the House of Osman. *Times*, March 4 and 5, 1924, pp. 14 and 15. Announced on March 7 that King Hussein of the Hedjaz had accepted offer of Caliphate from Moslems of Mesopotamia, Transjordan and the Hedjaz, and had been proclaimed Caliph in succession to Abdul Mejid. *Cur. Hist.*, April, 1924, 20: 153.
- 4 CZECHOSLOVAKIA—FRANCE. Exchanged ratifications of treaty of alliance of Jan. 25, 1924. *Ga. de Prague*, Mar. 8, 1924, p. 1.
- 6 INTERNATIONAL COMMISSION FOR AIR NAVIGATION. Concluded series of meetings in Paris at which practical problems concerning regulation of air services were considered. *Times*, Mar. 7, 1924, p. 11.
- 6 to Apr. 29 LEAGUE OF NATIONS OPIUM COMMITTEE. Held three sessions—Geneva, Mar. 6 to 11, Apr. 26 to 29, and Paris, Mar. 28 to 29—to prepare program for International Conference on Opium to be held Nov., 1924. *L. N. M. S.*, April, 1924, pp. 68 and 83.
- 8 GREECE—SOVIET RUSSIA. *De jure* recognition given to Soviet government by Greece. *Russian Information*, Mar. 29, 1924, p. 197.
- 8 NORWAY—UNITED STATES. Ratifications of arbitration treaty exchanged in Washington, further extending convention of April 4, 1908. *U. S. Treaty series*, no. 680.
- 10 JAPAN—SIAM. Treaty of commerce and navigation signed at Bangkok. *Commerce Reports*, June 2, 1924, p. 604.
- 10-15 LEAGUE OF NATIONS COUNCIL. Held 28th session in Geneva. Draft convention in attribution of Memel territory was accepted and Polish-Czechoslovak frontier in Jaworzyna district agreed upon.

March, 1924

Hungarian reconstruction plan put into operation with final signatures of protocols. Replies of Commission of Jurists to questions on interpretation of covenant and points in international law approved. Decisions reached on questions regarding German minorities in Poland, Saar Valley and Danzig. *L. N. M. S.*, April 15, 1924, p. 50.

- 12 CZECHOSLOVAKIA—POLAND. Solution of boundary dispute in Jaworzyna district, reached by League Council on March 12, accepted by representatives of both states. *L. N. M. S.*, April 15, 1924, p. 63.

12 to Apr. 7 MEMEL. Norman H. Davis, chairman of Special Commission of League, presented report to League Council on March 12. Draft convention, between Allied Powers and Lithuania, giving Lithuania sovereignty over Memel, was accepted by the powers concerned. Summary: *L. N. M. S.*, April, 1924, p. 64. On April 7, Poland sent note to Conference of Ambassadors protesting against acceptance by that body of recommendation of Davis Committee on the ground that the treaty fails to guarantee rights assured to Poland by Treaty of Versailles. *Cur. Hist.*, June, 1924, 20: 507.

- 13 to Apr. 30. GREAT BRITAIN—UNITED STATES. Ratifications of ship liquor treaty of Jan. 23, 1924, exchanged at Washington. *U. S. Treaty series*, no. 685.

- 13 JURISTS COMMISSION ON LEAGUE COVENANT. Replies of Jurists to questions raised by Council in September, 1924, in connection with Italo-Greek conflict, approved by League Council. Text: *L. N. M. S.*, April 15, 1924, p. 53.

- 14 BOLIVIA—GERMANY. Treaty of commerce signed at La Paz, renewing with a few modifications the former treaty of 1908. *Commerce Reports*, June 2, 1924, p. 604.

- 14 CANADA—SOVIET RUSSIA. Russian Soviet Trade Delegation recognized by Canadian government, preceding negotiations for trade relations. *Wash. Post*, March 15, 1924, p. 1.

- 14 HUNGARIAN RECONSTRUCTION. Protocol no. I (Declaration) signed at Geneva by representatives of Great Britain, France, Italy, Roumania, Yugoslavia, Czechoslovakia, and Hungary. Protocol no. II signed by Koranyi, Hungarian representative. *L. N. M. S. Suppl.*, May, 1924, p. 35.

- 14 IRISH FREE STATE—SPAIN. Commercial modus vivendi arranged by exchange of notes between Great Britain and Spain. *Ga. de Madrid*, Mar. 21, 1924, p. 1507.

March, 1924

- 14 ITALY—SOVIET RUSSIA. Commercial and Tariff treaties signed at Rome, Feb. 7, 1924, promulgated in Italy. Text: *G. U.*, Mar. 20, 1924, p. 1218.
- 15 CHILD WELFARE. Formation of special department of League of Nations to handle all matters concerning protection of children of the world announced at Geneva. Will take over work of International Bureau for Promotion of Child Welfare. *Cur. Hist.*, May, 1924, 20: 335.
- 15 to Apr. 1 CHINA—SOVIET RUSSIA. Tentative agreement for recognition signed by Dr. Wang and Mr. Karakhan on Mar. 15, subject to approval by their governments. *N. Y. Times*, Mar. 16, 1924, p. 6. China's failure to ratify was followed by Soviet ultimatum, of Mar. 19 and further memorandum on Mar. 24, to which Foreign Minister Koo replied on April 1 enumerating three points in treaty which must be revised. *Cur. Hist.*, June, 1924, 20: 520.
- 15 DANZIG—SOVIET RUSSIA. Recognition of Soviet government approved by Danzig Diet. *Wash. Post*, March 16, 1924, p. 3.
- 15 EGYPT. Inaugurated first Parliament. *N. Y. Times*, March 16, 1924, p. 7.
- 15-22 FRANCE—SOVIET RUSSIA. Notes exchanged regarding Bessarabian question. Text: *Nation* (N. Y.), April 30, 1924, p. 517.
- 15 ITALY—POLAND. Financial agreement signed at Rome, Mar. 10, 1924, promulgated in Italy. *G. U.*, Mar. 24, 1924, p. 1306.
- 15 SOVIET RUSSIA—SWEDEN. Commercial agreement according recognition *de jure* to Soviet Russia signed at Stockholm. *Wash. Post*, Mar. 16, 1924, p. 3. *N. Y. Times*, Mar. 16, 1924, p. 6.
- 16 FIUME. Formally annexed to Italy. *N. Y. Times*, Mar. 17, 1924, p. 1. *Cur. Hist.*, April, 1924, 20: 140.
- 17 BRAZIL. Decision of Brazil to accredit an Ambassador to League of Nations announced in Geneva. *N. Y. Times*, March 18, 1924, p. 23. *L. N. M. S.*, April 15, 1924, p. 56.
- 19 SWEDEN—SWITZERLAND. Provisional commercial agreement signed. *Commerce Reports*, May 5, 1924, p. 330.
- 21 RHODESIA, NORTHERN. Order in Council published providing for future government as British protectorate. *Times*, Mar. 22, 1924, p. 11. *Lond. Ga.*, Mar. 21, 1924, p. 2416.
- 22 DENMARK—POLAND. Commercial treaty signed at Warsaw providing general most-favored nation treatment. *Commerce Reports*, May 5, 1924, p. 329.

March, 1924

- 24 FRANCE—MONACO. Signed agreement at Paris concerning legalization of extracts from acts of the civil state. Text: *J. O.*, Mar. 31, 1924, p. 3066.
- 24 SIAM—UNITED STATES. Exchanged ratifications of extradition treaty of Dec. 20, 1922. *U. S. Treaty series*, no. 681.
- 25 SINGAPORE NAVAL BASE. Correspondence between Secretary of State for the Colonies and Self-Governing Dominions and India dated Feb. 20 to Mar. 18, 1924, made public. Text: *Times*, Mar. 26, 1924, p. 9. Cmd. 2083.
- 25 GREAT BRITAIN—IRAK (MESOPOTAMIA). Four subsidiary agreements signed: (1) financial; (2) judicial; (3) military; (4) governing employment of British officials by government of Irak. Summary: *Times*, April 15, 1924, p. 13.
- 25 to Apr. 13 GREECE. National Assembly, on Mar. 25, by unanimous vote, resolved: (1) The abolition of the Dynasty; (2) Establishment of a parliamentary republic, this decision to be ratified by plebiscite. *Press Notice*, April 22, 1924. *Times*, March 26, 1924, p. 14. Plebiscite on April 13 resulted in vote of 758,742 for a republic and 325,322 for retention of monarchy. *Cur. Hist.*, June, 1924, 20: 506.
- 28 BELGIUM—MONACO. Exchanged declarations concerning legalization of extracts from civil documents. *Monit.*, April 7-8, 1924, p. 1855.
- 28-30 RUMANIAN RUSSIAN CONFERENCE. Opened in Vienna on March 28. M. Krestinsky, Soviet delegate, read protest of his government against union of Bessarabia with Rumania. Text: *Nation (N. Y.)*, April 30, 1924, p. 515. On Mar. 30, proceedings suspended by refusal of Krestinsky to permit Bessarabian question to be excluded from discussion. *Cur. Hist.*, May, 1924, 20: 320.

April, 1924

- 2 NEWCASTLE EXEQUATURS. Secretary Hughes announced understanding reached with British government with regard to United States Consulate, closed in 1922, and exchange of notes on same day between Ambassador Kellogg and J. Ramsay MacDonald. Text: *Press Notice*, April 2, 1924. *N. Y. Times*, April 3, 1924, p. 8. *Times*, April 3, 1924, p. 14.
- 4 FRANCE—UNITED STATES. Treaty providing equal rights for American nationals and interests in Syria and Lebanon, territory under League mandate to France, signed in Paris. *Cur. Hist.*, May, 1924, 20: 334.

April, 1924

- 5 BULGARIA—UNITED STATES. Exchanged ratifications of naturalization treaty signed Nov. 23, 1923, at Sofia. Text: *U. S. Treaty series*, no. 684.
- 5 NETHERLANDS—UNITED STATES. Exchanged ratifications of agreement of Feb. 13, 1924, extending arbitration convention of 1908 for a period of five years. *U. S. Treaty series*, no. 682.
- 6 HUNGARY—ITALY. Convention relative to legal protection of nationals signed in Rome. Text: *G. U.*, Feb. 21, 1924, p. 849.
- 9-28 EXPERT COMMITTEES ON REPARATIONS. Dawes and McKenna reports submitted to Reparation Commission on April 9. Text: *Cur. Hist.*, May, 1924, 20: 263. Cmd. 2105. On April 11, Reparation Commission adopted report and recommended that findings be accepted by respective governments. *Wash. Post*, April 12, 1924, p. 5. Announced on April 16 that France, Great Britain and Belgium had accepted the reports. Note from Germany dated April 15, stated that "the reports offer a practical basis for a speedy solution of the reparation problem." *Wash. Post*, April 17, 1924, p. 1. *Times*, April 17, 1924, p. 12. On April 17, the Reparation Commission voted formal approval of Dawes plan, recommended it for adoption by allied governments and asked Berlin to draw up laws, name officials, and take other steps to put system in operation. Text of Communiqué: *N. Y. Times*, April 18, 1924, p. 1. Text of letter and replies of France, Belgium, Great Britain, and Italy: *Europe*, May 3, 1924, p. 583. On April 28, German War Burdens Commission sent to Reparation Commission names of Germans to serve on committees recommended by Experts' report. *N. Y. Times*, April 29, 1924, p. 2.
- 9 POLAND. Decided to create permanent delegation to League of Nations. *Cur. Hist.*, June, 1924, 20: 526.
- 14 FRANCE—ITALY. Convention concerning production and sale of silk worms signed at Paris. *J. O.*, Apr. 19, 1924, p. 3631.
- 14 GREAT BRITAIN—SOVIET RUSSIA. Anglo-Russian debt parley began in London to adjust claims and consider important questions, loans to Russia, etc. *Times*, Apr. 15, 1924, p. 14. *Contemp. R.*, May, 1924, p. 657.
- 14 UNITED STATES—VENEZUELA. Exchanged ratifications of extradition convention of Jan. 19, 1922. Text: *U. S. Treaty series*, no. 675.
- 15 RUHR AGREEMENT. New agreement concerning reparation deliveries of Ruhr coal and coke between M. I. C. U. M. (French

April, 1924

- Control Commission) and the Ruhr mine owners was signed, renewing agreement of Nov. 23, 1923, until June 15, 1924. *Times*, April 16, 1924, p. 13.
- 19 BELGIUM—GREECE. Government of Greece officially recognized by Belgium. *Monit.*, May 1, 1924, p. 2305.
- 21 CANADA—UNITED STATES. Arrangement concluded at Ottawa for return of stolen property of all kinds belonging to bona fide residents of one country and seized by customs authorities of the other. *Press Notice*, April 22, 1924.
- 21 TURKEY. CONSTITUTION. Angora Assembly passed final clauses of new constitution and adopted instrument as a whole. *Cur. Hist.*, June, 1924, 20: 517.
- 23 GREAT BRITAIN—SPAIN. Ratifications exchanged in Madrid of treaty of commerce and navigation signed Oct. 31, 1922. *Ga. de Madrid*, April 24, 1924, p. 485.
- 24 POLAND—SOVIET RUSSIA. Railway convention signed. *Russian Information*, May 17, 1924, p. 317.
- 26 JAPAN—UNITED STATES. Ratifications exchanged of agreement of Aug. 23, 1923, to extend for five years the arbitration agreement of May 5, 1908. *U. S. Treaty series*, no. 683.
- 26-27 SPAIN—UNITED STATES. Existing commercial agreement extended for one year by exchange of notes. *Ga. de Madrid*, May 1, 1924, p. 632.
- 29 CZECHOSLOVAKIA—POLAND. Delimitation conference held at Cracow. *Ga. de Prague*, May 3, 1924, p. 2.
- 30 to May 1 PERMANENT COURT OF INTERNATIONAL JUSTICE. Senate Committee on Foreign Relations held hearings on question of admission of the United States to the Protocol of the Court. *N. Y. Times*, May 1-2, 1924, p. 1.
- 30 to May 7 GERMAN-POLISH CONFERENCE. Held in Vienna to decide interpretation of provisions of Polish Treaty of June 28, 1919, in regard to nationals in former German territory ceded to Poland. *Times*, May 9, 1924, p. 13.

May, 1924

- 2 BELGIUM—NETHERLANDS. Declaration exchanged concerning legalization of extracts from state documents. *Monit.*, May 10, 1924, p. 2459.
- 2 CUBA—UNITED STATES. President Coolidge issued proclamation forbidding export of arms or munitions of war to Cuba. *Press Notice*, May 2, 1924.

May, 1924

- 3 GREAT BRITAIN—UNITED STATES. Correspondence dated Dec. 29, 1923 to Apr. 2, 1924, regarding diversion of water from Lake Michigan for proposed navigation canal by Sanitary District of Chicago, made public by Department of State. *Press Notice*, May 3, 1924.
- 6-21 MIXED CLAIMS COMMISSION¹ (UNITED STATES AND MEXICO). On May 6, State Department announced that Dr. Rodrigo Octavio of Brazil had accepted invitation to act as third member of Special Claims Commission, and on May 6, that Dr. C. Van Vollenhoven of Holland had accepted invitation to serve as third member of General Mixed Claims Commission. *Press Notice*, May 6 and 21, 1924.
- 7 CZECHOSLOVAKIA—ICELAND. Commercial treaty arranged by exchange of notes. *Ga. de Prague*, May 10, 1924, p. 1.
- 8 COLOMBIA—PANAMA. Procès-verbal of meeting in Washington of the Ministers of Panama and Colombia with Secretary Hughes, was signed by the two ministers and the Secretary of State, by which diplomatic relations, broken off in 1903, were resumed between Colombia and Panama. Text: *Press Notice*, May 9, 1924.
- 8 SOVIET RUSSIA—SWEDEN. Postal convention signed at Moscow. *Temps*, May 11, 1924, p. 1.
- 15 INTERNATIONAL EMIGRATION CONFERENCE. Opened at Rome, with fifty-eight countries represented. *N. Y. Times*, May 16, 1924, p. 2.

INTERNATIONAL CONVENTIONS

AGRICULTURAL WORKERS ASSOCIATIONS. Geneva, Nov. 12, 1921.

Promulgation:

Italy. Mar. 20, 1924. *G. U.*, May 6, 1924, p. 1694.

AGRICULTURE, INTERNATIONAL INSTITUTE OF. Rome, June 7, 1905.

Adhesion:

Estonia. May 6, 1924.

Irish Free State.

Lithuania.

Italian Colonies of Eritrea, Cyrenaica, Somaliland, Tripolitania.

April 15, 1924. *E. G.*, May 14, 1924, no. 13. *Monit.*, May 18, 1924, p. 2617.

ARCHIVES PROTECTION. Rome, April 6, 1922.

Ratification:

Italy. Dec. 13, 1923. *G. U.*, Mar. 10, 1924, p. 1098.

BESSARABIAN TREATY. Paris, Oct. 28, 1920.

Ratification:

France. April 9, 1924. *J. O.*, April 10, 1924, p. 3342.

CITIZENSHIP TREATY. Rome, April 6, 1922.

Promulgation:

Italy. Dec. 13, 1923. *G. U.*, Feb. 21, 1924, p. 850.

COPYRIGHT UNION. Protocol, Berne, March 20, 1914.

Adhesion:

Greece. *Monit.*, May 2, 1924, p. 2319.

CZECHOSLOVAK TREATY. Saint-Germain, Sept. 10, 1919.

Promulgation:

Italy. Jan. 10, 1924. *G. U.*, Feb. 23, 1924, p. 913.

GREEK MINORITIES TREATY. Sèvres, Aug. 10, 1920.

Ratification:

Italy. Jan. 31, 1924. *G. U.*, April 18, 1924, p. 1513.

HUNGARIAN RECONSTRUCTION. Geneva, March 14, 1924.

Ratification:

Hungary. April 19, 1924. *L. N. M. S.*, April, 1924, p. 76. *Cur. Hist.*, June, 1924, 20: 507.

INTERNATIONAL EXCHANGE OF DOCUMENTS AND PUBLICATIONS. Brussels, Mar. 15, 1886.

Adhesion:

Danzig. Mar. 15, 1924. *Monit.*, May 10, 1924, p. 2459.

Latvia. Mar. 27, 1924. *Monit.*, April 19, 1924, p. 2101.

LEAGUE OF NATIONS. Covenant. Protocol of Amendments. Geneva, Oct. 3-5, 1921.

Ratification:

Latvia. (Art. 4, 12, 13, 15, 16.) Feb. 21, 1924. *Monit.*, Mar. 9, 1924, p. 1154.

LIQUOR TRAFFIC IN AFRICA. Saint Germain-en Laye, Sept. 10, 1919.

Adhesion:

Egypt. Mar. 10, 1924. *J. O.*, May 11, 1924, p. 4238.

MEDICAL EXAMINATION OF YOUNG PERSONS EMPLOYED AT SEA. Geneva, Nov. 10, 1921.

Ratification:

Italy. Mar. 20, 1924. *G. U.*, May 5, 1924, p. 1675.

MONEY ORDERS. Rome, May 26, 1906.

Ratification:

Greece. Dec. 31, 1923. *Monit.*, April 10, 1924, p. 1940.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.

Ratification:

Netherlands. Mar. 17, 1924. *I. L. O. B.*, Mar. 31, 1924, p. 75.

OBSCENE PUBLICATIONS. Paris, May 4, 1910.

Ratification:

Estonia. Feb. 10, 1924. *J. O.*, Mar. 19, 1924, p. 2658.

PAN AMERICAN ARBITRATION TREATY. Santiago, May 5, 1923.

Ratification:

United States. Mar. 18, 1924. Text: *Cong. Rec.*, Mar. 18, 1924, p. 4576.

PENSION. Rome, April 6, 1922.

Promulgation:

Italy. Dec. 13, 1923. *G. U.*, Mar. 11, 1924, p. 1107.

POLISH TREATY. Versailles, June 28, 1919.

Promulgation:

Italy. Jan. 10, 1924. *G. U.*, Feb. 23, 1924, p. 919.

PROTECTION OF BIRDS USEFUL TO AGRICULTURE. Paris, Mar. 19, 1902.

Adhesion:

Czechoslovakia. April 3, 1924. *J. O.*, May 11, 1924, p. 4238.

PUBLIC HEALTH OFFICE. Rome, Dec. 9, 1907.

Adhesion:

Japan. Mar. 7, 1924. *Monit.*, April 11, 1924, p. 1951.

RAILWAY TRAFFIC. Portorose, Nov. 23, 1921.

Promulgation:

Italy. Mar. 20, 1924. *G. U.*, May 12, 1924, p. 1740.

REFRIGERATION, INTERNATIONAL INSTITUTE OF. Paris, June 21, 1920.

Ratification:

Japan. Mar. 4, 1924. *J. O.*, Mar. 10, 1924, p. 2362.

REPARATION FOR DAMAGES IN TURKEY. Paris, Nov. 23, 1923.

Promulgation:

Italy. Nov. 23, 1923. *G. U.*, April 23, 1924, p. 1553.

RUMANIAN TREATY. Paris, Dec. 9, 1919.

Promulgation:

Italy. Jan. 10, 1924. *G. U.*, Feb. 23, 1924, p. 917.

TANGLIER CONVENTION. Paris, Dec. 18, 1923.

Ratification:

France. May 22, 1924. *J. O.*, May 29, 1924, p. 4789.

Great Britain. May 8, 1924. *Times*, May 10, 1924, p. 12.

THRACIAN TREATY. Sevres, Aug. 10, 1920.

Ratification:

Italy. Jan. 31, 1924. *G. U.*, April 18, 1924, p. 1513.

TRUSTS. Rome, April 6, 1922.

Promulgation:

Italy. Dec. 13, 1923. *G. U.*, Feb. 27, 1924, p. 973.

UNEMPLOYMENT CONVENTION. Washington, Nov. 28, 1919.

Ratification:

South Africa. Feb. 20, 1924. *I. L. O. B.*, Mar. 31, 1924, p. 75.

UNEMPLOYMENT INDEMNITY IN CASE OF LOSS OF SHIP. Geneva, July 9, 1920.

Ratification:

Italy. Mar. 20, 1924. *G. U.*, May 6, 1924, p. 1693.

WAR LOANS. Rome, April 6, 1922.

Promulgation:

Italy. Dec. 13, 1923. *G. U.*, Mar. 8, 1924, p. 1078.

WEEKLY REST IN INDUSTRY. Geneva, Nov. 17, 1921.

Promulgation:

Italy. Mar. 20, 1924. *G. U.*, May 5, 1924, p. 1672.

WHITE LEAD IN PAINT. Geneva, Nov. 19, 1921.

Ratification:

Italy. Mar. 20, 1924. *G. U.*, May 6, 1924, p. 1694.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921.

Adhesion:

Leeward Islands, Jamaica, Mauritius. Mar. 7, 1924. *Monit.*, April 26, 1924, p. 2215.

Ratification deposited:

Latvia. Feb. 12, 1924. *Monit.*, April 4, 1924, p. 1789.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Ratification:

Brazil. *P. A. U.*, April, 1924, p. 410.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Arbitration agreement between the United Kingdom and Spain of Feb. 27, 1904. Notes exchanged for further renewal. London, Feb. 9, 1924. (Treaty Series No. 16, 1924.) 2½d.

Arbitration convention between United Kingdom and United States of America, April 4, 1908. Agreement for renewal of, with exchange of notes. Signed at Washington, June 23, 1923. (Treaty Series No. 8, 1924.) 2½d.

Belgium, Convention between United Kingdom and, extending extradition conventions to the Belgian Congo and certain British protectorates. (Treaty Series No. 1, 1924.) 2½d.

Canada and Italy. Commercial convention signed at London, Jan. 4, 1923. (Treaty Series No. 10, 1924.) 2½d.

Commercial travellers' samples. Notes respecting the accession of certain British Dominions and India to agreement between Great Britain and Czechoslovak Republic of Jan. 31, 1923. London, Dec. 19, 1923, and Jan. 2, 1924. (Treaty Series No. 14, 1924.) 2½d.

Consular visas for certificates of origin. Agreement between the United Kingdom and France extending to French zone of Morocco the provisions of Anglo-French agreement of Oct.-Nov. 1899. Signed London, Dec. 17-27, 1923. (Treaty Series No. 11, 1924.) 2½d.

Covenant of the League of Nations, Protocols of amendments of Articles 6 and 12, adopted by the Assembly, Oct. 4 and 5, 1921. (Treaty Series No. 4, 1924.) 2½d.

Elbe Statute of Navigation, convention supplementary to. Signed at Prague, Jan. 7, 1923. (Treaty Series No. 17, 1924.) 6½d.

Enemy property. Special report of committee appointed by Board of Trade to advise upon release of property of ex-enemy aliens in necessitous circumstances. (Cmd. 2046.) 6½d.

Estates of deceased seamen, disposal of. Agreement between United Kingdom and Finland, signed at Helsingfors, Dec. 14, 1923.

German reparation. Reports of expert committees appointed by the Reparation Commission. (English version.) (Cmd. 2105.) 3s. 2d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

German Reparation Recovery Act, 1921. Rate of levy. Negotiations between H. M. Government and the German Government, together with the decree dated March 3, 1924, issued in pursuance thereof by the German Government. (Cmd. 2089.) 2½d.

———. Treasury minute, Feb. 25, 1924. (Cmd. 2065.) 2½d.

Hungary, Agreement between United Kingdom and, modifying convention of Dec. 20, 1921, concerning instalments payable by Hungarian Government. Signed at Paris, Dec. 11, 1923. (Treaty Series No. 9, 1924.) 2½d.

International Commercial Statistics, convention, respecting the compilation of. Signed at Brussels, Dec. 31, 1923. (Treaty Series No. 15, 1924.) 10d.

International Labor Conference. Recommendation adopted at its fifth session, Oct. 22-29, 1923. Authentic text in French and English. (Cmd. 2051.) 6½d.

League of Nations. Fourth Assembly. Report of British delegates. (Misc. No. 1, 1924.) 9½d.

———. 26th and 27th sessions of the Council. Reports by Lord Robert Cecil. (Misc. Nos. 2 and 3, 1924.) 3½d. and 6½d.

———. 28th Session of the Council. Report by Lord Parmoor. (Misc. No. 4, 1924.) 6½d.

Legal proceedings in civil and commercial matters. Convention between United Kingdom and Belgium, signed at London, June 21, 1922. (Treaty Series No. 13, 1924.) 3½d.

Limitation of naval armament, Treaty between the British Empire, France, Italy, Japan and United States for the. Signed at Washington, Feb. 6, 1922. (Treaty Series No. 5, 1924.) 6½d.

Liquor traffic, Convention between United Kingdom and United States of America for regulation of the. Signed at Washington, Jan. 23, 1924. (Cmd. 2063.) 2½d.

Loadline certificates, agreement between United Kingdom and Japan for mutual recognition of. Signed at London, Jan. 21, 1924. (Treaty Series No. 12, 1924.) 2½d.

———. Order in Council exempting Japanese ships from detention for non-compliance with Merchant Shipping Acts. March 21, 1924. (S. R. & O. 1924, No. 388.) 1½d.

Morocco. Convention regarding the organization of the statute of the Tangier Zone. Signed at Paris, Dec. 18, 1923. (Cmd. 2096.) 1s. 1d.

Nauru (Mandated territory), Consular powers in. Merchant Shipping Order No. 2, Dec. 19, 1923. (S. R. & O. 1923, No. 1594.) 1½d.

Nepal, Treaty between the United Kingdom and, together with note, respecting the importation of arms and ammunition into Nepal. Signed at Katmandu, Dec. 21, 1923. (Misc. No. 5, 1924.) 2½d.

Pacific possessions, Treaty between the British Empire, France, Japan, and the United States of America, relating to their, together with accompanying declaration, supplementary treaty, and identic communication to Netherlands and Portuguese Governments respecting the treaty. Signed at Washington, Dec. 13, 1921, and Feb. 6, 1922. (Treaty Series No. 6, 1924.) 3½d.

Peace Treaties. The Treaties of Peace Orders (Amendment) Order, Feb. 20, 1924. (S. R. & O. 1924, No. 252.) 1½d.

Prize deposit account in the Supreme Court, Aug. 4, 1914, to March 31, 1923, with correspondence with the Comptroller and Auditor General. (H. C. Rept. No. 44, 1924.) 2½d.

Soviet Russia. A description of the various political units existing on Russian territory, to which is appended the Constitution of the Union of Socialist Soviet Republics of July 6, 1923. (With 2 maps.) *Foreign Office*. 1s. 1½d.

Spitsbergen, Treaty regulating the status of, and conferring the sovereignty on Norway. Signed at Paris, Feb. 9, 1920. (Treaty Series No. 18, 1924.) (With map.) 1s. 1d.

Treaties between the United Kingdom and foreign states. Accessions, withdrawals, etc. (Treaty Series No. 34, 1923.) 3½d.

Treaty Series, 1923. Index. (Treaty Series No. 35, 1923.) 2½d.

Tribunaux Arbitraux Mixtes. Recueil des decisions. Nos. 31-33. Oct.-Dec. 1923. 18s. 3d.

Turkey, Assessment and reparation of damage suffered in. Convention between United Kingdom, France, Italy, and Japan; covering nationals of contracting Powers, with protocol providing for signature by Roumania. Signed at Paris, Nov. 23, 1923. (Treaty Series No. 3, 1924.) 3½d.

———. Note on the Treaty of Peace (Turkey) Bill, 1924. (Cmd. 2058.) 2½d.

Turkey Treaty of Peace. (13 & 14 Geo. 5, Ch. 7.) 2½d.

War damages. Final report of Royal Commission on compensation for suffering and damage by enemy action. (Cmd. 2066.) 6½d.

UNITED STATES²

Alien Property Custodian. Annual report for year ended Dec. 31, 1923. 8 p. (H. doc. 155, 68th Cong. 1st sess.) Paper, 5c.

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

———. With reports of divisions. xii+261 p. (S. doc. 49, 68th Cong. 1st sess.) Paper, 30c.

Arbitration convention between France and United States of Feb. 10, 1908, Agreement extending duration of, signed at Washington, July 19, 1923. 4 p. [English and French.] (Treaty Series 679.) *State Dept.*

Arbitration convention between United States and Great Britain of April 4, 1908; Agreement extending duration of, signed at Washington, June 23, 1923. 3 p. (Treaty Series 674.) *State Dept.*

Arbitration convention between the Netherlands and United States of May 2, 1908, Agreement extending duration of, signed at Washington, Feb. 13, 1924. 4 p. (Treaty Series 682.) [English and Dutch.]

Arbitration convention between Norway and United States of April 4, 1908. Agreement further extending duration of, signed at Washington, Nov. 26, 1923. (Treaty Series 680.) [English and Norwegian.]

Arbitration of disputes arising out of contracts, maritime transactions, or commerce among the States or Territories or with foreign nations. Report to accompany bill to validate certain agreements. Jan. 24, 1924. (H. rp. 96, 68th Cong. 1st sess.) Paper, 5c.

———. Joint hearings, Jan. 9, 1924. iii+41 p. Paper, 5c.

China. Report in relation to claims presented by Government of China against United States arising out of negligent or unlawful acts in China of persons connected with military and naval forces of United States. April 23, 1924. 4 p. (S. doc. 96, 68th Cong. 1st sess.) Paper, 5c.

Chinese indemnity, Hearings on remission of further payments of. March 31–April 2, 1924. ii+98 p. Paper, 10c.

———. Report to accompany joint resolution. April 29, 1924. 6 p. (H. rp. 600, 68th Cong. 1st sess.) Paper, 5c.

Citizenship of wives of Americans in foreign service. Hearings, Feb. 12, 1924. 24 p. Paper, 5c.

Claims. Report with reference to claim by British Government for losses sustained by steamship Baron Berwick as result of collision with U. S. S. Iroquois and U. S. destroyer Truxton. Feb. 28, 1924. 4 p. (S. doc. 56, 68th Cong. 1st sess.) Paper, 5c.

———. Report in relation to claim of Government of Norway for losses sustained by steamship Hassel in collision with steamship Ausable. Feb. 25, 1924. 4 p. (S. doc. 52, 68th Cong. 1st sess.) Paper, 5c.

———. Report requesting submission to Congress of claims arising out of occupation of Vera Cruz, Mexico, by American forces in 1914. Feb. 7, 1924. 10 p. (S. doc. 33, 68th Cong. 1st sess.) Paper, 5c; report to accompany S. 2506 authorizing appropriation for payment of claims. March 18, 1924. 10 p. (S. rp. 281, 68th Cong. 1st sess.) Paper, 5c.

———. Report relative to claim presented by Swedish Government on account of sinking of fishing boat Lilly by U. S. Army transport Antigone. Feb. 11, 1924. 3 p. (S. doc. 39, 68th Cong. 1st sess.) Paper, 5c.

———. Report respecting claim of British Government for death of Samuel Richardson, Nov. 1, 1921, at Consuelo, Dominican Republic. Jan. 14, 1924. 3 p. (S. doc. 20, 68th Cong. 1st sess.) Paper, 5c.

———. Report respecting claim against United States for damage done by United States marines to property of Salvador Buitrago Diaz, owner of newspaper *La Tribuna*, of Managua, Nicaragua. Jan. 10, 1924. 3 p. (S. doc. 18, 68th Cong. 1st sess.) Paper, 5c; report to accompany S. 2455 to authorize payment of indemnity. April 4, 1924. (S. rp. 355, 68th Cong. 1st sess.) Paper, 5c.

———. Report respecting claims of several Nicaraguans against United States on account of deaths or injuries in encounters with American marines. Jan. 21, 1924. 5 p. (S. doc. 24, 68th Cong. 1st sess.) Paper, 5c; report to accompany S. 2457 to authorize payment of indemnity. April 4, 1924. (S. rp. 354, 68th Cong. 1st sess.) Paper, 5c.

Colombia. Diplomatic correspondence in connection with ratification of treaty with United States, April 6, 1914, and in connection with securing oil concessions for American citizens. 71 p. (S. doc. 64, 68th Cong. 1st sess.) Paper, 5c.

Communism. Attempt to seize American labor movement. Prepared by United Mine Workers of America. 1924. ii+43 p. (S. doc. 14, 68th Cong. 1st sess.) Paper, 5c.

Copyright. Proclamation extending to citizens of Canada benefits of Act of March 4, 1909. Dec. 27, 1923. 1 p. (No. 1682.) *State Dept.*

Copyright in Canada. Act 11 and 12 Geo. V, Ch. 24, to amend and consolidate law relating to copyright, amended June 13, 1923; in effect Jan. 1, 1924. iii+55 p. (Bulletin 20.) Paper, 10c.

Crignier, Madame, Relief of, for damage to property caused by search for body of John Paul Jones. Report from State Dept. (S. doc. 41, 58th Cong. 1st sess.)

———. Reports to accompany bill, Feb. 16, 1924, 13 p. (S. rp. 146, 68th Cong. 1st sess.); March 18, 1924, 10 p. (H. rp. 319, 68th Cong. 1st sess.) Paper, 5c each.

Diplomatic and consular service of United States, corrected to Jan. 1, 1924. 67 p. *State Dept.*

Disarmament, new call for. Address by President Coolidge, New York City, April 22, 1924. 10 p. (S. doc. 94, 68th Cong. 1st sess.)

Extradition treaty and additional article between United States and Venezuela, signed at Caracas, Jan. 19 and 21, 1922. 11 p. [English and Spanish.] (Treaty Series 675.) *State Dept.*

Extradition treaty between Latvia and United States. Signed at Riga, Oct. 16, 1923. 6 p. (Treaty Series 677.)

Extradition treaty between Siam and United States, signed Bangkok, Dec. 30, 1922. 6 p. (Treaty Series 681.)

Finland. Report of World War Foreign Debt Commission, May 2, 1923, with agreement providing for settlement of indebtedness of Finland to United States, and letter of approval of President Harding. Jan. 16, 1924. 9 p. (S. doc. 23, 68th Cong. 1st sess.) Paper, 5c.

———. Act to authorize settlement of indebtedness of, to United States. Approved March 12, 1924. 1 p. (Public 41.) Paper, 5c.

———. Report to accompany bill to authorize settlement of debt to United States. Jan. 23, 1924. 7 p. (H. rp. 89, 68th Cong. 1st sess.) Paper, 5c.

Foreign service of United States. Hearings on bill for reorganization and improvement of. Jan. 14–18, 1924. 226 p. *Foreign Affairs Committee.*

———. Report to accompany bill to reorganize and improve. Feb. 5, 1924. 18 p. (H. rp. 157, 68th Cong. 1st sess.) Paper, 5c.

Free zones in ports of United States, Report to accompany bill to provide for establishment of. April 28, 1924. 36 p. (S. rp. 477, 68th Cong. 1st sess.) Paper, 5c.

French Spoliation Claims. Hearing on S. 56 for allowance of certain. March 20, 1924. ii+23 p. Paper, 5c; reports to accompany, Jan. 14, 1924; 6 p. (S. rp. 45, 68th Cong. 1st sess.); Apr. 15, 1924, 9 p. (S. rp. 404, 68th Cong. 1st sess.). Paper, 5c each.

Geneva conference and ocean shipping. By E. T. Chamberlain. Includes convention and statute on international regime of maritime ports agreed upon at Geneva Conference. 24 p. (Trade Information Bulletin 202.) *Commerce Dept.*

Germany, Hearings on resolution for relief of women and children in. Jan. 29–Feb. 13, 1924. 156 p. i. Paper, 15c.

———. Report, Mar. 3, 1924. 3 p. (H. rp. 256, 68th Cong. 1st sess.) Paper, 5c.

Hungary, Agreement between United States and, concerning funding of indebtedness, with report of World War Foreign Debt Commission. April 25, 1924. 10 p. (H. doc. 243, 68th Cong. 1st sess.) Paper, 5c.

Immigration. Letter from Secretary of Labor transmitting suggestions in connection with legislation. 1924. 20 p. *Labor Dept.*

Immigration laws and rules of Feb. 1, 1924. 168 p. map. Paper, 15c.

Immigration, naturalization, citizenship, Chinese, Japanese, negroes, and aliens. List of publications for sale by Superintendent of Documents. Nov. 1923. (Price list 67, 7th ed.) *Govt. Printing Office.*

Immigration, restriction of. Hearings, Dec. 26, 1923-Jan. 19, 1924. 914 p. il. (Serial 1-A). Paper, 60c.

———. Hearings, Jan. 14-Feb. 12, 1924. 915-1175 p. il. (Serial 2-A.) Paper, 25c.

———. Report to accompany bill H. R. 6540. Feb. 9, 1924. 29 p. (H. rp. 176, pt. 1, 68th Cong. 1st sess.) Paper, 5c; minority report, pt. 2, 20 p. Paper, 5c.

———. Report to accompany bill H. R. 7995. March 24, 1924. 41 p. (H. rp. 350, pt. 1, 68th Cong. 1st sess.) Paper, 5c; minority report, pt. 2. Paper, 5c.

———. Hearings on bills S. 2365 and S. 2576 to limit immigration of aliens into United States. Feb. 13-Apr. 8, 1924. iii+314 p. Paper, 30c.

International Joint Commission on Boundary Waters between United States and Canada. Organization, jurisdiction, and operation under treaty of Jan. 11, 1909. 1924. v+5 p. Paper, 10c.

International relations. Recent questions and negotiations. Address by Charles E. Hughes, Secretary of State, Jan. 23, 1924. 9 p. *State Dept.*

Japanese immigration legislation. Hearings on bill to limit immigration of aliens into United States. Mar. 11-15, 1924. iii+170 p. Paper, 15c.

Liquor convention between Great Britain and United States. Statement of Henry St. George Tucker on resolution requesting President to transmit copy of treaty to House of Representatives. Feb. 20 and March 7, 1924. ii+32 p. Paper, 5c.

Mexico, General claims convention between United States and, signed at Washington, Sept. 8, 1923. 9 p. (Treaty Series 678.) [English and Spanish.] *State Dept.*

———. Special claims convention, signed Mexico City, Sept. 10, 1923. 9 p. (Treaty Series 676.) [English and Spanish.] *State Dept.*

———. Proclamation prohibiting exportation of arms or munitions to. Jan. 7, 1924. 1 p. (No. 1683.) *State Dept.*

Migratory bird treaty act regulations, Proclamation further amending. April 11, 1924. 1 p. (No. 1691.) *State Dept.*

Mixed Claims Commission, United States and Germany. Administrative Decision No. 3 dealing with liability of Germany for damages in nature of interest and measure of damages for property taken. Dec. 11, 1923. 61-70 p.

———. First report of Marshall Morgan, assistant to Agent of United States, April 10-June 16, 1923. viii+55 p. Paper, 10c.

———. Opinion in war-risk insurance premium claim, March 11, 1924. iii+71-74 p. *State Dept.*

———. Opinion construing phrase "naval and military works or materials" as applied to hull losses and also dealing with requisitioned Dutch ships. March 25, 1924. iii+75-101 p. *State Dept.*

Narcotics. Report to accompany resolution for appropriation for participation of United States in two international conferences for control of narcotic drugs. Feb. 28, 1924. 1 p. (H. rp. 244, 68th Cong. 1st sess.) Paper, 5c.

Oil pollution of navigable coastal waters of United States, Report to accompany S. 1942 to prevent. Jan. 15, 1924. 4 p. (S. rp. 66, 68th Cong. 1st sess.) Paper, 5c.

Opium and narcotic laws of United States. 1924. 27 p. Paper, 5c.

Panama Canal, Transit and harbor regulations for, effective Jan. 1, 1924. Executive Order, Dec. 20, 1923. 23 p. (No. 3938.) *State Dept.*

Parcel post agreement between Netherlands, East India and United States, approved Feb. 20, 1924. 6 p. *State Dept.*

Philippine independence. Hearings on S. 912 providing for withdrawal of United States from Philippine Islands. Feb. 11-Mar. 3, 1924. ii+119 p. Paper, 10c.

———. Hearings on House bills and resolutions. Feb. 17 and 25, 1924. 99 p. Paper, 10c.

Rio Grande River. Report to accompany bill providing for study of equitable use of Rio Grande with Mexico below Fort Quitman, Tex. April 26, 1924. 2 p. (S. rp. 474, 68th Cong. 1st sess.) Paper, 5c.

Ruhr Valley. Report on present conditions made by Commander W. S. Bainbridge, Military Order of Foreign Wars of United States. 1924. 16 p. (S. doc. 26, 68th Cong. 1st sess.) Paper, 5c.

Russia, recognition of. Hearings before subcommittee, Jan. 21-23, 1924. pt. 1. 158 p. Paper, 15c.

———. Reports on Russian affairs by W. B. Thompson, Col. R. Robins, Gen. Graves, Gov. J. P. Goodrich, Maj. Slaughter, and Maj. Faymonville. Feb. 1, 1924. 2 p. (S. doc. 31, 68th Cong. 1st sess.) Paper, 5c.

St. Mary and Milk Rivers, Hearing in matter of measurement and apportionment of waters of, in United States and Canada. Sept. 15 and 17, 1921. 91 p. *International Joint Commission on Boundary Waters between United States and Canada.*

Trade-mark protection in Latin America. By B. A. Kosicki. April 14, 1924. ii+28 p. (Trade Information Bulletin 219.) *Commerce Dept.*

World War, 1914-1918. Secret history of a great betrayal, by E. D. Morel. 1924. vi+34 p. (S. doc. 40, 68th Cong. 1st sess.) Paper, 5c.

GEORGE A. FINCH.

MIXED CLAIMS COMMISSION—UNITED STATES AND GERMANY^a

OPINION IN WAR-RISK INSURANCE PREMIUM CLAIMS

[NOVEMBER 1, 1923]

The Commission is here dealing with a group of American claims for reimbursement for war-risk insurance premiums paid for protection against stipulated hazards of war. There is no complaint of injury to or destruction or seizure of property by the acts of Germany or her agents. The premiums were paid as a matter of business prudence for protection by insurance against risks which never matured into damage to or destruction of the property insured.

Under the terms of the Treaty of Berlin as construed by Administrative Decisions Nos. I and II of the Commission, Germany is financially obligated to make full and complete compensation for all losses sustained by American nationals proximately caused by Germany's acts.

But under the terms of that treaty Germany can not be held liable for all losses incident to the very existence of a state of war. To this class belong claims by American nationals for refund of premiums paid by them for insurance against the risks of possible losses which never occurred, risks in their very nature uncertain, indefinite, indeterminable, and too remote to furnish a solid basis on which to rest a claim.

The Alabama Claims decisions considered and applied.

The use of the term "indirect" as applied to the "national" claims involved in the Alabama case is inapt, inaccurate and ambiguous. The distinction sought to be made between *damages* which are direct and those which are indirect is frequently illusory and fanciful and should have no place in international law. The legal concept of the term "indirect" when applied to an act proximately causing a loss is quite distinct from that of the term "remote."

PARKER, *Umpire*, delivered the opinion of the Commission, the American and German Commissioners concurring in the conclusions:

The Commission is here dealing with a group of claims put forward by the United States on behalf of its nationals in which reimbursement is sought for war-risk insurance premiums paid by them for protection against stipulated hazards of war. There is no complaint of injury to or destruction or seizure of property by the acts of Germany or her agents. The premiums were paid for protection against possible acts which never occurred.

That these claims may be understandingly dealt with it will prove helpful at the outset to consider: What were the pertinent problems growing out of the war confronting American nationals, especially those engaged directly or indirectly in maritime commerce, at the time such insurance was written and premiums paid, and against what risks was protection sought?

The initial eruptions of the World War in the last days of July, 1914,

(a) Established in pursuance of the agreement between the United States and Germany of Aug. 10, 1922. Edwin B. Parker, Umpire; Chandler P. Anderson, American Commissioner; Wilhelm Kiesselbach, German Commissioner; Robert W. Bonynge, American Agent; Karl von Lewinski, German Agent.

Numbered footnotes appear in the original decision or opinion; lettered footnotes and references in brackets have been inserted by the Editor of the JOURNAL. Head-notes supplied by the Editor.

found the United States, in common with other neutral Powers, in a state of unpreparedness. Its commerce was on every sea, yet it was without an adequate merchant marine to keep it afloat. Intricate questions affecting the safety of neutral freights and cargoes, even when carried in neutral vessels, were, and some of them still are, unsettled, rendering uncertain the protection of a neutral flag. Yet American institutions were not then prepared to protect American commerce by insurance against the risks of war.

During the first two years and eight months of the war, which we designate the "period of neutrality," the United States was neutral.¹ Its nationals had, therefore, nothing to fear from war risks for their vessels or their cargoes, or for their freights shipped on vessels flying foreign flags, save: (a) when part or all of the cargo was contraband, (b) when violating a blockade, (c) from mines, and (d) when shipments of American ownership were made under a belligerent flag.

The difficulty lay in determining what was and what was not contraband, and what ports were and what were not blockaded, and the location of mines. With a view to removing, as far as practicable, these uncertainties prejudicial to neutral commerce, the United States very promptly, by identic notes addressed to all belligerent Powers, suggested that all agree to be bound by the laws of naval warfare as laid down by the signed but unratified Declaration of London of 1909. In making this suggestion the opinion was expressed that "an acceptance of these laws by the belligerents would prevent grave misunderstandings which may arise as to the relations between neutral Powers and the belligerents."² Germany and her allies acquiesced in this suggestion.³ Great Britain and her allies responded that they had "decided to adopt generally the rules of the declaration in question, subject to certain modifications and additions which they judge indispensable to the efficient conduct of their naval operations."⁴ On examination it was found that these "modifications and additions" touching the laws of contraband and blockade were so substantial and far-reaching in their nature that the

¹ Reference is made to Administrative Decision No. 1 for the definition of the terms used herein. [Printed in this JOURNAL, Vol. 18, No. 1 (Jan. 1924), pp. 175-176.]

² Telegrams of Secretary of State to American Embassies at London, Paris, St. Petersburg, Berlin, and Vienna, and the American Legation at Brussels, Aug. 6, 1914, page 1 of Special Supplement to Volume 9 of American Journal of International Law, July, 1915, being "Diplomatic Correspondence between the United States and Belligerent Governments Relating to Neutral Rights and Commerce" (hereinafter cited as "Dip. Cor.," with volume and page numbers, Vol. 10 being for October, 1916, and Vol. 11 for October, 1917, supplements).

³ Telegram, Ambassador Penfield to Secretary of State, Aug. 13, 1914, Dip. Cor. Vol. 9, p. 1. Telegrams, Ambassador Gerard to Secretary of State, Aug. 20 and 22, 1914, Dip. Cor., Vol. 9, p. 2.

⁴ Dispatch, Ambassador Page to Secretary of State, August 27, 1914, enclosing note of Aug. 27, 1914, from British Foreign Office, Dip. Cor., Vol. 9, p. 2-3; telegram, Chargé Wilson to Secretary of State, Aug. 27, 1914, *ibid.*, p. 5; telegram, Ambassador Herrick to S. of S., Sept. 3, 1914, *ibid.*, p. 6.

United States, despairing for the time being at least of bringing the conflicting Powers to agreement with respect to the laws of naval warfare, withdrew its suggestion and notified all belligerents that it would "insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States irrespective of the provisions of the Declaration of London."⁵

Then followed in quick succession numerous additions by the British Government to her lists of both contraband and conditional contraband, as defined by the Declaration of London, with modifications and extensions of the rule of "continuous voyage" or "ultimate destination" as applicable to blockade as well as contraband—all promptly followed by both her allies and her enemies. In their wake came numerous seizures, detentions, and requisitions of American cargoes by the British Government; the declaration by the German Government that the English Channel and the north and west coasts of France and the waters surrounding the British Isles constituted a war area and that all enemy ships found therein would be destroyed⁶ and even neutral ships endangered—the latter vigorously protested by the United States;⁷ the declaration of the British Government and the French Government of March 1, 1915, that they would "detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin," a course of action protested by the United States as previously unknown to international law;⁸ the declaration that "The British fleet has instituted a blockade, effectively controlling by cruiser 'cordon' all passage to and from Germany by sea";⁹ constant and emphatic protests directed by the Government of the United States against both the British Government and her allies and the German Government and her allies for "vexations," "unwarranted," "unjustifiable," "oppressive," "indefensible," and "illegal" interference with American commerce;¹⁰ until on July 7, 1916, the British and French Governments revoked their partial adherence to the Declaration of

⁵ Telegrams, Acting Secretary of State, Oct. 22 and 24, 1914, Dip. Cor., Vol. 9, p. 7-8.

⁶ Dispatch, Ambassador Gerard to Secretary of State, Feb. 6, 1915, transmitting proclamation and memorial of German Government of Feb. 4, 1915, Dip. Cor., Vol. 9, p. 83-85.

⁷ Telegram, Secretary of State to Ambassador Gerard, Feb. 10, 1915, *ibid.*, p. 86-88.

⁸ Declarations from British and French Ambassadors to Secretary of State, Mar. 1, 1915, *ibid.*, p. 101-102; telegrams, Secretary of State to Ambassadors Page and Sharp, Mar. 5, 1915, *ibid.*, p. 102-104.

⁹ Telegram, Ambassador Page to Secretary of State, Mar. 15, 1915, transmitting memorandum of Mar. 13, 1915, from British Secretary of State for Foreign Affairs, *ibid.*, p. 106-108.

¹⁰ Instruction, Secretary of State to Ambassador Page, Oct. 21, 1915, Dip. Cor., Vol. 10, p. 73-88; telegram, Secretary of State to Ambassador Gerard, Feb. 10, 1915, *ibid.*, Vol. 9, p. 86-88; note, Secretary of State to German Ambassador, Apr. 21, 1915, *ibid.*, p. 127-129; telegram, Secretary of State to Ambassador Page, July 14, 1915, *ibid.*, p. 153-154; telegram, Secretary of State to Ambassador Gerard, July 21, 1915, *ibid.*, 155-157; telegram, Secretary of State to Ambassador Penfield, Aug. 12, 1915, *ibid.*, 166-171; telegram, Secretary of State to Ambassador Gerard, Apr. 18, 1916, *ibid.*, p. 186-190; same to same, May 8, 1916, *ibid.*, p. 199-200.

London and promulgated specific substitutes of their own devising,¹¹ protested by the Government of the United States "as at variance with the law and practice of nations in several respects."¹² Both Germany and Great Britain admitted planting mines.¹³ As stated in one of the briefs filed before this Commission by claimants in support of this group of claims, "retaliatory acts, *first of one belligerent and then of another*, accumulated progressively until what had always been believed to be the rights of neutrals substantially disappeared."¹⁴

Under the provisions of Article 59 of the Declaration of London, believed to be declaratory of the preexisting rules of international law "In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods."¹⁵ Article 3 of the Declaration of Paris (to which the United States has never unqualifiedly adhered) protects neutral goods, except contraband of war, under the enemy's flag against *confiscation*. Whether this rule will afford a neutral owner protection from loss flowing from damage to or *destruction* of his property, when such loss is incidental to its transportation on a belligerent vessel, is still involved in doubt.¹⁶ French prize courts have held that no such protection is afforded; that the Declaration of Paris simply insures the owner of a seized neutral cargo the restitution of his property or the proceeds of its sale; but where German ships were destroyed at sea because the French captor could not bring them into port as prizes, the owners of the neutral cargoes could not complain, inasmuch as "such destruction was an act of war the propriety of which the owners of the cargo could not call in question, and which barred all claim on their part to an indemnity."¹⁷ Hence the risks taken by Ameri-

¹¹ Dispatch, Ambassador Page to Secretary of State, July 10, 1916, enclosing copies of "The Maritime Rights Order in Council, 1916," Dip. Cor., Vol. 10, p. 5.

¹² Instruction, Secretary of State to Chargé Laughlin, London, Sept. 18, 1916, Dip. Cor., Vol. 11, p. 1-2.

¹³ Memorandum from British Secretary of State for Foreign Affairs to American Ambassador, Mar. 15, 1915; reply of German Govt. to protest of British Govt. against the laying of German mines, transmitted by Ambassador Gerard to Secretary of State, Nov. 13, 1914; notice of British Govt. of laying of mines given through Ambassador Page and transmitted by the latter to the Secretary of State, Jan. 25, 1917; Feb. 15, 1917; Mar. 23, 1917, and by Consul General Skinner, Apr. 27, 1917. See also note of Secretary of State to British Ambassador, Feb. 19, 1917.

¹⁴ Brief of George Grafton Wilson, page 11 (*italics ours*). See particularly par. 33 of note from Secretary of State to Ambassador Page, Oct. 21, 1915; and pars. 37 and 38 of Sir Edward Grey's memorandum in reply thereto of April 24, 1916; also British Ambassador to Secretary of State, Mar. 1, 1915; memorial of German Govt. respecting retaliatory measures dated Feb. 4, 1915, transmitted by Ambassador Gerard to Secretary of State, Feb. 6, 1915.

¹⁵ *The Roland*, 1 B. & C. P. C. 188.

¹⁶ Hall Int. Law, 7th ed., pages 787, 788; *The Magnus* (1798), 1 Ch. Rob. 31; *The Rosalie and Betty* (1800), 2 Ch. Rob. 343; *The Jenny* (1866), 5 Wall. 183; *The Carlos F. Roses* (1899), 177 U. S. 655; *The Roland* (1915), 1 B. & C. P. C. 188; *The Porto*, Journal Officiel, Mar. 30, 1915; *The Czar Nicolai*, Jour. Off. 19 Ap. 1915.

¹⁷ Calvo, Sec. 2817; see also *The Glitra*, decided by the German Imperial Supreme Prize

can exporters and importers in the use of belligerent vessels for the transportation of their property are obvious.

We are not here concerned with either justifying or condemning any one or all of the parties to the conflict for the measures taken by them. We have briefly sketched the situation confronting American maritime commerce solely for the purpose of clearly understanding and stating the nature, source, and extent of the risks insured against, for the cost of which insurance recovery is sought. It is manifest that the very existence of maritime warfare inevitably entails inconvenience and loss to neutral commerce, no matter how precisely established rules of international law may be observed. It is equally manifest that the kaleidoscopic changes in the lists of both absolute and conditional contraband; the extensions of the rule of "ultimate destination"; the novel conditions of the blockade and counter-blockade, and in part the novel naval instruments and methods used for their enforcement; the widespread mine fields; and, last but not least, the fact that the channels of American foreign commerce would have been choked but for the use of belligerent bottoms—all combined to create war hazards so numerous and so bewildering that sound discretion impelled American exporters and importers to insure against the numerous known and unknown and constantly increasing risks suddenly thrust upon them.

War-risk insurance afforded at least a measure of protection. But American companies were not at the outbreak of the war in a position to write in large volume insurance of this character, which had in the past been carried principally by foreign underwriters. These latter were for the moment suffering from the general demoralization resulting from the shock of the outbreak of the war and functioning but imperfectly. The varying conditions from day to day, the uncertainties as to the boundaries, extent, or duration of the conflict—in a word, the practical absence of known factors with which to construct formulæ based on the law of averages as a measure for the risks which the insurance companies were called upon to take—made it impossible for the American companies at the outset, with their limited facilities, to take any risks save at what seemed to be almost prohibitive rates. As pointed out in the American brief above mentioned, "many merchants refused to pay the premiums charged by American companies, which had in some instances advanced 400%." Fully realising the extreme gravity of the situation, the Congress of the United States acted promptly and effectively. By the act of September 2, 1914, the Bureau of War Risk Insurance was established in its Treasury Department, and the Government of the United States almost immediately began to write war-risk insurance on American vessels and cargoes at reasonable rates. It is significant that

Court, Sept. 17, 1915; *Amer. Journal Int. Law*, Vol. X, p. 921-927; *Indian Prince*, decided by the German Imperial Supreme Prize Court, Apr. 15, 1915, *Amer. Jour. Int. Law*, Vol. X, p. 930-935; *Oppenheim Int. Law*, Vol. 11, 3rd ed. secs. 185 and 424; *The Nereide*, 9 Cranch, 388-418.

the writer of the American brief above mentioned assigns as the cause of particular suffering by American citizens not acts of Germany but the fact that "no adequate system of maritime insurance had been developed in the United States," and adds:

In consequence cotton planters had almost no market and individuals were urged to buy bales of cotton to assist producers who had no market. Freight rates from many ports were consequently forced up, for example: per 100 lb., cotton New York to Liverpool July, 1914, \$.25; November, 1914, \$.50; January, 1915, \$1; April, 1915, \$2; December, 1916, \$5. . . . Such figures indicate in a measure the abnormal risks which the World War had brought upon merchants of the United States and against which they were compelled to insure.

The war situation with respect to cotton has very aptly been put forward by American counsel as typical, and we may profitably briefly examine it. At the outbreak of war the price of cotton to the American *producer* according to the reports of the United States Department of Agriculture was 12.4c. per lb. By September, 1914, it had declined to 8.7c. per lb.; by October to 7.8c. per lb. and in November to 6.3c. per lb.; notwithstanding the Government of the United States began to write war-risk insurance in September, 1914. After November, 1914, the price curve to the *producers* of cotton, speaking generally, was upward, until in December, 1916, it was 19.6c. per lb. and in September, 1918, the peak of 32.2c. per lb. was reached. The Declaration of London places "raw cotton" on the list of articles which "may not be declared contraband of war." It remained noncontraband until August 24, 1915, when the British Government by Order in Council declared it *absolute contraband*. Prior to that time cotton had received special consideration and treatment at the hands of Great Britain and its allies. While on March 1st the British and French Governments gave notice that they would "prevent commodities of any kind from reaching or leaving Germany"¹⁸ the British Government on March 9th announced in substance that all cotton for which contracts of sale and freight engagements had been made prior to March 2 would "be allowed free or bought at contract price if stopped, provided the ship sails not later than March 31st."¹⁹ This arrangement applied to cotton *for neutral destination only*.²⁰ Under the practice thus instituted by Great Britain, American cargoes of cotton, whether on American or other vessels, were detained and most of the cotton was purchased by the British Government, although some of it was permitted to move to neutral ports when the British became satisfied that it did not have

¹⁸ British Ambassador to Secretary of State, Mar. 1, 1915.

¹⁹ Telegram Consul General Skinner to Secretary of State, Mar. 9, 1915; par. 5 of Note Sir Edward Grey to Secretary of State, Mar. 15, 1915; par. 4 memorandum of Lord Crewe, June 17; see telegram Ambassador Page to Secretary of State, June 22, 1915.

²⁰ Memorandum of Sir Edward Grey. "Respecting American Ships and Cargoes detained at British Ports," May 14, with note of May 15, 1915; see also communication from Ambassador Page to Secretary of State, May 20, 1915.

an ultimate enemy destination. It appears that on May 14, 1915, when the British Secretary of State for Foreign Affairs prepared his memorandum for the Secretary of State of the United States, there were then being detained by Great Britain two American ships with cotton cargoes, and 23 other vessels carrying cargoes of American cotton. The cotton thus "detained" when not released by the British Government was paid for by it with reasonable promptness, usually on the basis of the market price at the port of shipment, *plus freight if prepaid, plus the current rate of insurance*. Thus the shipper was made whole as if he had sold at the American port of shipment. In this way neutral cotton was prevented from finding its way either directly or indirectly into Germany.²¹

An American counsel has pointed out that ocean freight rates on cotton from New York to Liverpool advanced from 25c. per 100 lbs. in July, 1914, to \$5 per 100 lbs. in December, 1916. When opposite these figures we place the prices received for their cotton by American *producers* of 12.4c. per lb. in July, 1914, which declined to 6.3c. per lb. in November, 1914, during the period of general demoralization; then consider the gradual advance in price as war-risk insurance came to be more freely written and dislocated commercial conditions came to be readjusted to a state of war, until in December, 1916, the price was 19.6c. per lb. (although ocean freights had advanced from 25c. to \$5 per 100 lbs.); and further consider the continued advance in price during the period in which most of the American cotton not consumed at home was taken and paid for by Great Britain on the basis of the market price in the United States, plus insurance and freight—until the peak was reached in September, 1918, when the American *producer* received 32.2c. per lb.; all these facts considered together point directly to the conclusion that, in the great majority of cases if not in all of them, the war-risk insurance premiums and freights on raw cotton and cotton linters exported from the United States were *ultimately* paid (a) in the early days of the war by the *producer* in the decreased price received by him and (b) later by the *consumer* in the increased price paid by him—rather than by the shipper or exporter from whom the insurance companies directly received the premiums and in whose behalf claims are presented to this Commission. No such claims are being here asserted on behalf of the foreign *consumer*, for under the treaty this tribunal is not competent to consider them. No such claims are being here asserted on behalf of the *producers* who were the real sufferers in the early days of the war when cotton declined from 12.4c. to 6.3c. per lb. The reason is obvious. These losses which were very real and substantial, and in many instances resulted in great distress, were simply inevitable and incidental consequences of the existence of a state of war, losses which must to some extent fall on neutrals as well as belligerents. Many of such premiums forming the basis of claims against Germany were paid to foreign under-

²¹ Pars. 19, 20, and 36 of Sir Edward Grey's memo. delivered by the British Ambassador to Secy. of State, April 24, 1916.

writers either directly or indirectly through reinsurance. All such payments constitute an economic national loss to the United States. Similar considerations doubtless prompted Mr. Sumner, in 1869, in enumerating the several classes of damages embraced in the "Alabama Claims," to treat the "rise of insurance on all American vessels" as a "national loss" as contradistinguished from "private claims," which he separately dealt with,²² for in many cases it is practically impossible to allocate such premium payments to the individuals ultimately paying them. But even where they can be so allocated, this fact, for reasons presently mentioned, can not affect the result of this decision.

The situation as above outlined gives a fairly accurate understanding of the risks confronting those American nationals directly or indirectly interested in maritime commerce following the outbreak of the war. That business prudence suggested insuring against such risks is obvious. Diligent enquiry of counsel fails to discover any comprehensive compilation of the war-risk insurance actually written on American vessels and cargoes and disclosing what risks were actually covered thereby. There is available, however, a complete and accurate record of all such insurance written by the Bureau of War Risk Insurance of the Treasury Department of the United States, constituting a substantial percentage of all such insurance written by American institutions, both public and private. An examination of these records throws a flood of light not only on the risks actually covered but also on the sources of such of these risks as matured into actual losses. The policies of insurance issued by this Bureau contain this clause:

Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes, and peoples, of what nations, condition, or quality soever and all consequences of hostilities or warlike operations, whether before or after declarations of war.

Insurance on merchandise to ports in Europe and Mediterranean ports in Africa, as expressed in the applications therefor, was based on "the amount of invoice (including freight, insurance premiums, and other charges when prepaid and included in the invoice) plus 10%." The experience of this Bureau with respect to policies written, premiums collected, and losses paid is reflected by the table; copy of which is in the margin.²³ From this table it will be noted that losses were lodged against the Bureau on 29 out of 2,590 policies issued during the period of neutrality. An analysis of these claims for losses is reflected by the other table copied in the margin.²⁴

From this it appears that there were 13 ships or their cargoes involved in the claims for losses based on the 29 policies in question. Of these 13 losses,

²² Moore, Vol. I, 511-12; also *post*, pages 50 and 57 [pages 595 and 601 herein.]

²³ See footnote 23 on p. 588.

²⁴ See footnote 24 on p. 588.

five were directly attributable to Germany; while four were based on British detentions and seizure; three were presumably caused by German mines and one (unsettled and in litigation) was due to the wrecking of an American vessel on a submerged rock while under the control of a British naval prize crew.

Rejecting all speculations and considering only the actual experience of

²³ Note.

Period	Insurance			Losses	
	Number of policies	Insurance	Premiums	Number of policies	Losses sustained
September, 1914, to March 31, 1917	2,590	\$293,915,486.00	\$5,048,678.96	29	\$1,711,555.96
April 1, 1917, to December 31, 1918	24,340	1,690,999,930.00	41,445,358.62	670	27,619,249.07
Total to approximate end of actual war.....	26,930	1,984,915,416.00	46,494,037.58	699	29,330,805.03
January 1, 1919, to December 31, 1920.....	297	82,357,877.00	246,366.88		
Grand total.....	27,227	2,067,273,293.00	46,740,404.46	699	29,330,805.03

²⁴ Note.

United States Bureau of War Risk Insurance—Analysis of losses sustained August 1, 1914, to March 31, 1917, inclusive.

[Compiled for the Commission from statements submitted by the United States Veterans' Bureau.]

	Insurance	Claimed	Net losses
Directly attributed to Germany, 5 ships (Frye, Portland, Borinquen, Illinois, and Healdton), 7 policies (6 hull, 1 freight) ..	\$1,413,050.00	\$765,420.91	\$765,309.73
Presumably German mines, 3 ships (Evelyn, Carib, and Greenbrier), 14 policies (3 hull, 11 cargo)	709,103.00	709,103.00	650,047.13
Total presumably and directly attributed to Germany: 8 ships, 21 policies (9 hull, 11 cargo, and 1 freight), being 2 submarine sinkings, 1 raider sinking, 3 mine sinkings, 1 seizure and 1 detention.....	2,122,153.00	1,474,523.91	1,415,356.86
British detentions and seizures: 4 ships (Seguranca, Navajo, Carolyn, McCullough), 6 policies, cargo only, being 3 detentions and 1 seizure.....	623,480.00	136,422.76	136,199.10
Submerged-rock case in litigation (Llama): 2 policies on 1 ship (1 hull, 1 freight)	160,000.00	160,000.00	
	2,905,633.00	1,770,946.67	1,551,555.96
If Llama loss is paid.....			160,000.00
			1,711,555.96
Grand total; 13 ships (8 German and 5 British claims), 29 policies (10 hull, 17 cargo, 2 freight)	2,905,633.00	1,770,946.67	1,711,555.96

the United States Bureau of War Risk Insurance, it is apparent that American exporters and importers who paid war-risk insurance premiums to that Bureau were insured against "all consequences of hostilities or warlike operations," including "takings at sea, arrests, restraints, and detainments of all kings, princes, and peoples, of what nations, condition, or quality soever"; and that the losses actually sustained, against which American nationals were protected, directly resulted from the acts of the British Government as well as from the acts of the German Government. While the terms of some of the policies issued by private insurers, both domestic and foreign, differed in some particulars from those insured by the War Risk Bureau, this fact does not affect the result of this decision.

Having examined the conditions confronting American nationals engaged in foreign commerce, the nature of the risks to such commerce, the sources from which they sprang, and the measures taken to protect against them, we come now to inquire: Do the premiums for insurance against such risks constitute claims for which Germany is financially liable falling within the jurisdiction of this Commission? We hold that they do not.

In announcing our reasons for so holding, we will apply them to the facts put forward by the United States in three claims, one on behalf of the United States Steel Products Company, one on behalf of the Costa Rica Union Mining Company, and one on behalf of the South Porto Rico Sugar Company, being claims numbered 20, 22, and 27, respectively, all selected by the Agent of the United States as typical and among the strongest cases of the war-risk premium group, pending before this Commission. The facts are:

Case No. 20, United States Steel Products Company.

In the latter part of 1913 and early part of 1914, long prior to any rumblings of a world war, the United States Steel Products Company, a New Jersey corporation, entered into a contract to fabricate and transport materials and apparatus to be used in the erection of bridges at the site of the coaling station at Cristobal, Panama. The company's contract bound it to make deliveries at Cristobal for stipulated sums. The materials were shipped from Baltimore, Md., on or about October 30, 1914, by the *British* steamship *Westlands*. The company, in the exercise of what it deemed business prudence, insured the shipment against the risks of war while being transported from Baltimore to Cristobal. The premium paid therefor by the company on November 16, 1914, amounted to \$1,111.76. For this amount, with interest from the date of payment, claim is made.

Case No. 22, Costa Rica Union Mining Company.

The Costa Rica Union Mining Company, a West Virginia corporation, owned and operated a producing gold mine in Costa Rica. On December 11, 1917, it shipped on the *American* steamship *Santa Marta* a consignment

of cyanide of sodium which it protected with war-risk insurance, paying a premium therefor amounting to \$13.44, for which amount, with interest from the date of payment, it makes claim.

Case No. 27, South Porto Rico Sugar Company.

The South Porto Rico Sugar Company, a New Jersey corporation, owned and operated sugar factories and plants on the islands of Porto Rico and Santo Domingo, engaged in the manufacture of sugar for refining and sale in the United States. Several of these plants were in close proximity to harbors navigated by ocean-going vessels, and the high smokestack of one plant was clearly visible by day and night to vessels several miles at sea. Because of the exposed position of the plants the company, upon the entrance of the United States into the war, protected them against risk from bombardment. The total amount of premiums for insurance of this class paid by this company during the war amounted to \$60,760.00, for which amount, with interest, claim is made.

In the two cases first mentioned the voyages were uneventful and the shipments safely reached their respective destinations. In the third case the plants insured against bombardments were unmolested.

Inasmuch as long prior to the war the steel corporation had for a stipulated sum sold its products "delivered at Cristobal," it is clear that it could not pass the cost of the war-risk insurance on to the purchaser. Hence its profits were diminished to the extent of the premiums paid by it. The voyage was coastwise on mineless seas. The shipment was neutral and non-contraband. The destination, both immediate and ultimate, was unblockaded. The risk insured against was attributable to shipping under a British flag. The premiums paid unquestionably represented a loss suffered as a consequence of the war by the steel corporation during the period of the neutrality of the United States.

The mining company's shipment was made and premium paid during the period of belligerency of the United States. The insurance covered supplies for use by the company in its mining operations. It follows that the premium paid increased the company's operating costs to that extent. Here also was a loss suffered as a consequence of the war.

The operating costs of the sugar company were increased to the extent of the premiums paid by it for insurance against the hazards of bombardment. We will assume (although the record is silent on this point) that this additional cost of operation was not passed on to the purchaser or ultimate consumer. On this assumption premiums claimed by the sugar company constitute a loss suffered as a consequence of the war.

The premiums paid for which reimbursement is sought in these three cases are, for the purpose of this decision, treated as losses to claimants not passed on by them. The precise terms of the policies for which such premiums were paid are immaterial. The pertinent enquiry is, Were these losses attribut-

able to Germany's act as a proximate cause? If they were not, then all claims pending before this Commission for the recovery of amounts expended for war-risk insurance *as such* must be dismissed.

The principal arguments advanced by numerous counsel in several briefs presented by the American Agent pressing claims of this group may be summarized thus:

That under Section 5 of the resolution of Congress and also under Article 231 of the Treaty of Versailles, both carried into and made a part of the Treaty of Berlin, Germany is (in the language of an American counsel) "responsible for all damage or loss in consequence of the war, no matter what act or whose act was the immediate cause of the injury"; and that the war-risk insurance premiums paid by American nationals constitute losses to them resulting as a consequence of the war and are therefore within the terms of the Treaty of Berlin.

Other statements of the argument made by American counsel are quoted in the three succeeding paragraphs as follows:

It must be concluded that no matter how *remote* a particular loss, damage, or injury may have been with respect to some act on the part of Germany, *other than the initiation of the war itself*, if the loss, damage, or injury was the natural and connected effect of the war, Germany is liable therefor.

The prime and direct cause of the risk was the illegality of the warfare which was then and thereafter conducted by the Imperial German Government.

Under Section 5 of this same Joint Resolution German property was to be retained till suitable provision for American claims against the Governments of Austria-Hungary and Germany had been made. These claims were to include the *loss* of American nationals who had suffered "since July 31, 1914, loss, damage, or injury to their persons or their property, directly or indirectly, . . . in consequence of hostilities or of any operations of war, or otherwise."

Examining these arguments in the light of the construction of the Treaty of Berlin as embodied in Administrative Decisions Nos. I and II of this Commission,^b handed down this day, it is apparent that in the opinion of this Commission they are based on a wholly erroneous interpretation of the language of that treaty, coupled with a confusion of the legal concept of the proximate cause of a loss with that of the consequential and indirect damages flowing therefrom.²⁵

Leaving out of consideration claims falling within defined categories, not applicable here, Germany's liabilities under the Treaty of Berlin for losses sustained by American nationals is [are] limited to losses "caused by the acts of Germany or her agents." The proximate *cause* of the loss must have been

^b Printed in this JOURNAL, Vol. 18, No. 1 (Jan. 1924), pp. 175-176, 177-186.

²⁵ Particular reference is here made to so much of Administrative Decision No. II as is embraced under the last caption, "Losses Suffered Directly or Indirectly."

in legal contemplation the act of Germany. The proximate *result* or *consequence* of *that act* must have been the loss, damage, or injury suffered. The *capacity* in which the American national suffered—whether the act *operated* directly on him or indirectly as a stockholder or *otherwise*, whether the subjective nature of the loss was direct or indirect, is immaterial, but the *cause* of his suffering must have been the act of Germany or her agents. Such an act proximately causing a loss, though sustained through an indirect channel, renders Germany liable. But where the causal connection between the act complained of and the loss is broken, or so involved and tangled and remote that it can not be clearly traced, there is no liability. The simple test to be applied in all cases is: Has an American national proven a loss suffered by him susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss attributable to Germany's act as a proximate cause?

Applying this simple test to the facts in this group of cases the Commission has no hesitation in holding that they do not fall within the terms of the Treaty of Berlin. They are not claims for injury or damage to, or destruction or conversion of, property by the acts of Germany or her agents. They are claims put forward to recover the amount of premiums paid for protection against possible happenings which never in fact happened; for protection against risks to both neutral and belligerent commerce of a highly speculative and uncertain nature, incident to the very existence of a state of maritime warfare, participated in by both groups of belligerents.

From the quotation hereinbefore made from one of the briefs filed by American counsel²⁶ it will be noted that freight rates on cotton from New York to Liverpool were advanced from 25 cents per 100 pounds in July, 1914, to \$5.00 per 100 pounds in December, 1916, as a direct consequence of the war. There is no more reason why war-risk insurance premiums paid by American nationals should be recovered from Germany than there is that these advances in ocean freight rates, which, as heretofore pointed out, were during the early days of the war in a large measure indirectly paid by the American cotton planters, should be so recovered. If the terms of the treaty can be so expanded by forced construction as to embrace such claims, then they will include all increased living costs, increased railroad freights, increased income and profits taxes, in a word *all* costs or consequences of the war, direct or remote, to the extent that such costs were paid or losses suffered by American nationals. The rejection of such a construction must follow its mere statement.

While in no wise binding on this tribunal, it is worthy of note that the Reparation Commission, constituted under the Versailles Treaty, has so construed that treaty as to exclude amounts paid by nationals of the Allied Powers as premiums for war-risk insurance.

²⁶ Page 38 [585] *ante*.

The United States has declined to press very large claims against Germany representing the cost to it of pensions and separation allowances; costs which were undoubtedly incurred as a "consequence of the war"; costs which must be borne by all American taxpayers; costs which the United States was authorized to assert and which the Allied Powers are asserting under the Treaty of Versailles.²⁷

There is nothing in the Treaty of Berlin or the history of its making to support the contention that the United States, while declining to press claims of the character mentioned in the preceding paragraph, nevertheless intended to assert, on behalf of a comparatively small group of American exporters and importers, claims for refund of war-risk insurance premiums, which belong to that numerous class of losses suffered as an incidental and remote consequence of the war, when similar claims are not being asserted by any Allied Power.

In a brief filed by private counsel and adopted by the American Agent, the argument is put forward that under the treaties of 1785, 1799, and 1828 between the United States and Prussia American nationals were guaranteed freedom from "confiscation or condemnation and loss of property" even where contraband, and that these guarantees were violated by the unlawful warfare instituted by Germany, necessitating American nationals purchasing war-risk insurance. Without expressing any opinion with respect to the binding effect of the treaties in question or the quality of the conduct of either party with respect thereto, suffice it to say that the claims for the recovery of war-risk insurance premiums paid by American nationals are not based on any alleged confiscation or condemnation or loss of property in the sense that these terms are used in those treaties, but are rather to recover expenses incurred for protection against risks incident to the existence of a state of war, participated in by both groups of belligerents, claims not embraced within the terms of the Treaty of Berlin, which determines the jurisdiction of this Commission.

There is a suggestion in another brief filed by private counsel and presented by the American Agent that the terms of Article 232 of the Treaty of Versailles, read in connection with Annex I to Section I of Part VIII thereof, impose liability on Germany to reimburse American nationals for war-risk insurance premiums paid by them during the period of belligerency. It follows from the rules laid down in Administrative Decisions Nos. I and II that such a construction must be rejected by this Commission.

In another brief, prepared by private counsel and presented by the American Agent, it is urged that under Article I of the agreement under which this Commission is constituted Germany is obligated to pay claims of this class. While the construction placed by counsel on the language of the agreement must be rejected, still if accepted the result would be the same, inasmuch as

²⁷ See Note 11, this Commission's Administrative Decision No. II handed down this day.

Germany's liabilities, which are fixed by the Treaty of Berlin, can not be enlarged by the agreement.

The Alabama claims decisions considered and applied.—The decisions of the Geneva Tribunal and the decisions of the *Alabama* Claims Courts in disposing of the so-called *Alabama* Claims are respectively invoked and earnestly pressed upon our consideration, the former by the German and the latter by the American counsel. A careful analysis will disclose that these decisions do not bear with controlling weight on the questions presented by this group of cases. So far as they are in point, they support the conclusions reached by this Commission. As, however, they are being constantly cited in cases here pending, and as the use of the terms "indirect claims," "indirect damages," and "indirect losses" in connection with these *Alabama* claims has led to much confusion of thought and a misapprehension of the real decisions made, they may be here profitably examined with care, historically and analytically.²⁸

The claims which came to be known by the generic term "*Alabama Claims*" were asserted by the United States against Great Britain because of the latter's alleged breach of neutrality in allowing cruisers to be built and fitted out or manned in British ports for the use of the Confederate States during the American Civil War. After diplomatic negotiations extending over a period of approximately seven years, during which the merits of these claims, their nature, and scope became political issues on both sides of the Atlantic, the Treaty of Washington of May 8, 1871, was executed, providing, among other things, for the creation of a "tribunal of arbitration" to dispose of them. They were finally disposed of, so far as Great Britain was concerned, by the "Geneva Award" of September 14, 1872, under which it was decreed that Great Britain should pay to the United States a lump sum of \$15,500,000 in gold "for the satisfaction of all the claims referred to the consideration of the tribunal."

This sum was awarded and paid to the United States in its capacity as sovereign, rather than in behalf of any of its individual nationals or group or groups of nationals. The disposition of this fund rested entirely with Congress, which by two acts—the first approved June 23, 1874, the second approved June 5, 1882—provided for the creation of a "Court of Commissioners of Alabama Claims" to hear and determine, in accordance with the provisions of these acts, the claims of all those seeking satisfaction out of this fund.

The Geneva "tribunal of arbitration" was international in character and was governed by the provisions of the Treaty of Washington and applicable international law.

The Court of Commissioners of Alabama Claims was a creature of the Congress of the United States, governed by the provisions of the acts creat-

²⁸ By the designation "Moore" herein is meant the work of John Bassett Moore on "*International Arbitrations*." Italics used in quotations are ours.

ing it, constituting a part of the machinery for the distribution of a fund in the Treasury of the United States over which the Congress had absolute control.

This distinction must be constantly borne in mind in weighing the decisions of each of these tribunals.

It is significant that the term "indirect" to identify the particular class of claims which afterwards came to be known as "indirect claims," was not used in any of the diplomatic correspondence or in any of the negotiations preliminary to the execution of the Treaty of Washington or in that document itself. To an impassioned speech delivered by Charles Sumner in the Senate of the United States on April 13, 1869, may be traced the conception of a definite political issue in the form of a demand upon Great Britain for the payment, not only of "private claims," but "*national claims*." Mr. Sumner estimated the private claims at about \$15,000,000, and in addition thereto he enumerated classes of "*national claims*," embracing, as one of several classes, the "enhanced payment of insurance." He put forward this claim on behalf of the United States as a sovereign nation and not on behalf of any individual or group of individuals. The reason, doubtless, was that the exporter or importer who actually paid the war-risk premiums did not in the majority of cases sustain a loss equal to the premium paid or any loss at all; but took the cost of insurance into account in the purchase or sale of the product, passing such cost on to either the producer or the consumer, so that it was practically impossible to trace the loss to the individual ultimately bearing it. Hence Mr. Sumner treated this item as an economic loss sustained by the nation as a whole.²⁹ Mr. Sumner anticipated the objection that these enumerated national losses were too *indirect* and *remote* to afford a solid ground for claims against Great Britain, but brushed this objection to one side as of little moment.

The first time these and similar classes of claims were officially designated as "indirect" was on February 3, 1872, when Earl Granville, then British Minister of Foreign Affairs, addressed a note to General Schenck, then American Minister to Great Britain, announcing that it was the view of Her Majesty's Government "that it was not within the province of the tribunal of arbitration at Geneva to decide upon the claims for *indirect losses*." This was followed by a similar pronouncement in the Queen's speech opening Parliament three days later, and thenceforth these claims which Mr. Sumner had classed as "*national claims*" as contradistinguished from "*private claims*" came to be referred to in the press and elsewhere as "*indirect claims*."

A careful reading of the history of the Alabama Claims from their inception to the handing down of the Geneva Award strongly suggests that the Government of the United States in putting forward these so-called "*national claims*" was actuated by two motives: (1) domestic political considerations

²⁹ Moore, 509-512.

rendered it expedient for the government to assert these claims for what they might be worth, and (2) they were put forward as makeweights, not with the hope that they would be allowed, but for trading purposes in the expectation of securing a large lump-sum award.³⁰ That the second motive mentioned actuated the Government of the United States is made manifest by a letter from Mr. Hoar, one of the American members of the Joint High Commission to Mr. Fish, written in response to the latter's inquiry after a controversy had arisen between the two governments with respect to these so-called "indirect claims," in which Mr. Hoar said that he—

Always thought and expected that those claims, though incapable from their nature of computation and from their magnitude incapable of compensation, were to be submitted to the tribunal of arbitration, and urged as a reason why a gross sum should be awarded, which should be an ample and liberal compensation for our losses by captures and burnings, without going into petty details.

Mr. Fish, then Secretary of State, never had any confidence in the soundness of these claims.³¹ Mr. Adams, the American Commissioner, had, to Mr. Fish and others, expressed the opinion that these claims were without merit.³² All concerned agreed that the familiar rule of proximate cause must be applied in determining Great Britain's liability in each claim presented. The following excerpts from the "Counter Case" presented by the American Agent are significant:

Both parties contemplate that the United States will endeavor to establish in these proceedings *some tangible connection of cause and effect* between the injuries for which they ask compensation and the "*acts committed by the several vessels*," which the treaty contemplates are to be shown to be the fount of these injuries.

The tribunal of arbitration being a judicial body, invested by the parties with the functions necessary for determining the issues between them, and being now seized of the substance of the matters in dispute, will hold itself bound by *such reasonable and established rules of law regarding the relations of cause and effect* as it may assume that the parties had in view when they entered into their engagement to make this reference.

It will be noted that the American Agent in substance admitted that claims must be limited to those proximately caused by the acts of the particular vessels in connection with the building, fitting out, and manning of which Great Britain had failed in her duties of neutrality. Parenthetically, attention is called to the fact that the language of paragraph 5 of the Peace

³⁰ Instructions of Mr. Fish to Mr. Motley, Moore, 512-513. Statement of Mr. Fish to Joint High Commission, March 8, 1871, Moore, 629-630.

³¹ See instructions of Mr. Fish to Mr. J. Lothrop Motley, May 15, 1869, Moore, 512-516; statement of Mr. Fish to Joint High Commission, March 8, 1871, Moore, 629-630; telegram of Mr. Fish to General Schenck, April 27, 1872, Moore, 642.

³² Moore, 642-643.

Resolution and paragraph 4 of the Annex to Section IV of Part X of the Versailles Treaty (both carried into the Treaty of Berlin), fixing liability for *acts committed by Germany or her agents*, is not broader, so far as concerns the application of the rule of proximate cause, than the language of the Treaty of Washington, where the liability of Great Britain was restricted to losses sustained by American vessels "growing out of the *acts committed by the several vessels* which have given rise to the claims generically known as the 'Alabama claims.'"

There is no reason to doubt that had the question been squarely presented to the Geneva Tribunal it would have *unanimously* held to the view which had already been expressed by Mr. Adams, the American Commissioner, that these so-called national or indirect claims were not within the purview of the Treaty of Washington. It will be borne in mind that the Geneva Tribunal found that under the terms of the Treaty Great Britain was liable only for the damages inflicted by (1) the *Alabama* and her tender, the *Tuscaloosa*; (2) the *Florida* and her tenders, the *Clarence*, the *Tacony*, and the *Archer*, and (3) the *Shenandoah* after leaving Melbourne on February 18, 1865. These three cruisers and four tenders named will be hereinafter referred to as "inculpated cruisers." The tribunal further found that Great Britain was not liable for any damages inflicted by a number of other cruisers and vessels, including the *Retribution*, *Georgia*, *Sumter*, *Nashville*, *Tallahassee*, *Chickamauga*, *Sallie*, *Jefferson Davis*, *Music*, *Boston*, and *V. H. Joy*, which will be hereinafter referred to as "exculpated cruisers." In addition to the vessels above named, it appears from the British Case³³ that there were fitted out in Confederate ports a number of armed vessels, mostly of small tonnage, which preyed upon and captured and destroyed vessels of the United States. Some of these were the *Calhoun*, *Savannah*, *Saint Nicholas*, *Winslow*, *York*, *Echo*, and *Patrick Henry*. These vessels were stated to have taken from sixty to seventy prizes.

It was manifestly impossible to determine to what extent the inculpated cruisers had required the purchase by American nationals of war risk insurance or influenced the rate thereof or the amount of the premiums paid. Manifestly, it could not be contended that the specific act of a specific cruiser caused the payment of a specific premium. But the Treaty of Washington fixed liability upon Great Britain only for claims "growing out of *acts committed by*" inculpated cruisers, and all other claims were necessarily excluded from consideration by the tribunal.

Had the question been submitted to the Geneva Tribunal and it had found—as it was apparent from the record it would have found—that these so-called "indirect claims" were not within the purview of the Treaty of Washington, then we would have had a decision of an international tribunal acting within its jurisdiction and as such entitled to due weight. However, the domestic political pressure on the then Government of Great Britain

³³ Moore, 594-595.

was so strong that it declined to be a party to the submission of these claims in any form to the commission, vigorously contending that under the Treaty of Washington they lay entirely outside of the commission's jurisdiction and hence it was not competent to receive, consider, or deal with them. In these circumstances and in order to prevent making abortive the work of the commission, resort was had to political expediency, which took the form of the reading of a statement by Count Sclopis, the president of the tribunal, in behalf of all the arbitrators, which, after reciting the facts of the controversy between the contending parties with respect to certain specified classes of claims (which were not, however, designated as "indirect claims"), proceeded:³⁴

the arbitrators think it right to state that, after the most careful perusal of all that has been urged on the part of the Government of the United States in respect to these claims, they have arrived, individually and collectively, at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the tribunal in making its award.

While this ruling was in the nature of an interlocutory order or judgment, it was, when considered in the light of the record, nothing more than an extrajudicial declaration made necessary by political expediency and entirely justified on that ground. It was accepted and acquiesced in by both agents, being authorized by their respective governments so to do. Mr. Davis, the Agent of the United States, among other things stated that this ruling "is accepted by the President of the United States as determinative of their judgment upon the important question of public law involved." After the commission had decided the issue of Great Britain's liability with respect to the particular vessels, the agent and counsel of the United States devoted their energies toward securing a lump-sum award, "such a sum as should be practically an indemnity to the sufferers."³⁵ These efforts resulted in the final award of \$15,500,000. It is important to determine how this result was reached. The estimate prepared by Mr. Staempfli and the memorandum of Sir Alexander Cockburn (both members of the tribunal)³⁶ strongly indicate that it was a compromise figure. However, it is significant that Mr. Sumner in his speech in the Senate on April 13, 1869, in opposition to the Johnson-Clarendon Convention estimated the "private claims" at about \$15,000,000;³⁷ Mr. Fish in his statement which he read in opening the meeting of the Joint High Commission on March 8, 1871, recited that the "claims for the loss and destruction of private property which have thus far been presented amount to about \$14,000,000 without interest";³⁸ and

³⁴ Moore, 4113-4114.

³⁵ *Ibid.*, 4116-4119.

³⁶ *Ibid.*, 630.

³⁵ *Ibid.*, 651.

³⁷ *Ibid.*, 511.

according to the records in the office of the Secretary of State of the United States the list of claims *presented* to the Geneva Tribunal for damages actually *inflicted by the inculpated cruisers* and their tenders aggregated \$15,530,434.00. It is also significant to note that this total of claims so presented included claims presented on behalf of insurance companies or associations claiming through subrogation reimbursement for losses paid by them to American nationals aggregating in amount \$5,111,133.01. This figure should be borne in mind in connection with the history of the distribution of this award by the United States.

While the history of such distribution is important and interesting, it is not sufficiently relevant here to do more than note that the provisions of the first act creating and governing the court with respect to the right to recover and the measure of damages conformed in the main to the bases used by the Geneva Tribunal. The outstanding exception was the extraordinary provision which denied to any insurance company the right to recover sums paid by it for losses sustained under war risk policies issued by it unless it could show that the aggregate of all war risk losses paid exceeded the aggregate of all war risk premiums received. The act authorized the allowance by the court of interest at the rate of 4% per annum on the "amount of actual loss or damage" from such date as the court should decide that such loss or damage was sustained by the claimant. The fact that the Geneva award included interest at the rate of 6%³⁹ and that this act of Congress limited interest to 4% suggests a belief on the part of Congress that the fund would not be more than sufficient to pay all of the awards which the court was authorized to make in pursuance of the provisions of the act. This may furnish a possible explanation for excluding claims of insurers, notwithstanding their claims to the extent of approximately \$5,000,000 had been embraced in the Geneva award. The court rejected a number of claims as being *indirect* and *remote* in their nature, including claims for war risk insurance premiums paid where the property insured had not been destroyed.⁴⁰ These decisions are not, however, regarded as important, as clearly claims of this class were placed beyond the jurisdiction of the court by the act of Congress creating it.⁴¹

The judgments rendered by this first court, including interest, aggregated \$9,316,120.25.⁴²

The Geneva Award fund had been invested in bonds since its payment by Great Britain, and the accumulations, with the coin premiums on bonds sold and currency premiums sums, brought the total to an amount which, after paying the awards of the first court, left \$10,089,004.96 in the Treasury of the

³⁹ Sir Alexander Cockburn's dissenting opinion, Moore, 651.

⁴⁰ Davis Report 22. Also *Gannett v. U. S.*, 184, Davis Report 42; *Hyneman v. U. S.*, 643, Davis Report 45; *Phillips v. U. S.*, 1228, Davis Report 56.

⁴¹ See language of court in Davis Report 35-41.

⁴² Moore, 4648.

United States subject to disposition by Congress. It is worthy of note that a few public men advocated returning to Great Britain the fund remaining,⁴³ but this suggestion apparently was not taken seriously. It would seem that the more logical course would have been to have satisfied the claims of the American underwriters which had been allowed by the Geneva Tribunal based on losses actually sustained by American nationals and then to have returned to Great Britain the balance, if any, remaining. After heated political contests, apparently among those espousing (1) the cause of insurers who had taken risks on property destroyed by the inculpatated cruisers and who sought to be subrogated to the rights of the insured, (2) those who had paid war-risk insurance premiums by reason of the Confederate cruisers being on the sea, and (3) those whose property was destroyed by Confederate vessels designated "exculpated cruisers" and others, for whose depredations Great Britain was held not to be responsible, the act of June 5, 1882, was passed. This restricted the Court of Commissioners of Alabama Claims, which was reconstituted, to receiving and examining and entering judgment on claims falling within two classes: (1) "claims directly resulting from damage done on the high seas by Confederate cruisers"—exculpated as well as inculpatated cruisers—excluding only those claims proven under the act of 1874; (2) "claims for the payment of premiums for war risks, whether paid to corporations, agents, or individuals, *after the sailing of any Confederate cruiser.*"⁴⁴

It was provided that claims of the first class should be first satisfied out of the fund. If any then remained, claimants of the second class should be paid *pro rata*.

As heretofore pointed out, an examination of the list of claims presented by the United States growing out of the acts of the inculpatated cruisers discloses that approximately one-third in amount of these claims were asserted on behalf of insurance companies claiming to be subrogated for losses paid by them. The records of the Geneva Tribunal indicate that these claims were considered and allowed on the same basis as those of American nationals whose losses were not protected by insurance, care being taken, however, to eliminate "double claims," that is, claims where the owners of the property destroyed and the insurer had each put in a claim for its value.⁴⁵ Of these claims by insurance companies, aggregating a little more than \$5,111,000, which were apparently allowed by the Geneva Tribunal, only six, aggregating in amount a trifle over \$111,000, could be brought within the terms of the act of 1874 by showing that their war risk losses were greater in amount than their aggregate premiums on the war-risk insurance written by

⁴³ Moore, 4662.

⁴⁴ This language is particularly significant when it is remembered that a number of Confederate cruisers were active long before the Confederate States came into possession of any of the inculpatated cruisers.

⁴⁵ Moore, 4116.

them. It would seem, therefore, that approximately \$5,000,000 allowed by the Geneva Tribunal on behalf of the insurance companies was by the acts of 1874 and 1882 diverted from the course for which it was intended, and applied (1) to the payment of claims for damages inflicted by cruisers other than the "inculpated cruisers," all of which claims were rejected by the Geneva Tribunal, and (2) to the payment of war risk premium claims which had been treated by Mr. Sumner and others as "national claims" and later came to be designated as "indirect claims," not falling within the terms of the Treaty of Washington.

The judgments rendered by the second court on claims of the first class aggregated \$3,346,000. This left nearly \$7,000,000 to be prorated among war-risk premiums claimants, in whose favor judgments aggregating approximately \$16,313,000 had been rendered.

It is apparent from the foregoing that the fact that a portion of the lump-sum award paid by Great Britain to the United States was by the latter paid to war-risk premium claimants can not be regarded as a controlling precedent in support of a like class of claims before this tribunal. The acts of 1874 and 1882 of the Congress of the United States dealt solely with the *distribution* of an international award after it had been made and paid. Whatever the motives of Congress may have been, it was clearly acting within its jurisdiction in disposing of a fund which it had the absolute right to control. Its acts, however, were purely national in their scope and were not intended to have, and could not possibly have, any international effect. The disposition or distribution of this fund by Congress was not a matter of international concern. The numerous decisions of American courts dealing with the distribution of the Alabama award cited and discussed by American counsel are without application here.

While for the reasons hereinbefore indicated the decisions of the Geneva Tribunal are of doubtful value as precedents, still, in so far as they are entitled to be weighed, they hold: (1) that claims for war-risk premiums paid are not recoverable under the applicable principles of international law, and (2) that claims asserted by American underwriters for reimbursement of losses paid by them to American owners of property lost or damaged, which losses furnish a solid basis for a claim put forward by such owners, are direct losses and recoverable as such.

The use of the term "indirect" as applied to the "national claims" involved in the Alabama case is not justified by the early debates in the Senate of the United States, by the record of the preliminary diplomatic negotiations, by the Treaty of Washington, by the "American Case" as presented by the American Agent, or by the award. Its use in this connection has been productive of great confusion and misunderstanding. The use of the term to describe a particular class of claims is inapt, inaccurate, and ambiguous. The distinction sought to be made between *damages* which are direct and those which are indirect is frequently illusory and fanciful and

should have no place in international law. The legal concept of the term "indirect" when applied to an act proximately causing a loss is quite distinct from that of the term "remote." The distinction is important.

In the Alabama case the United States—a belligerent—asserted, on behalf of its nationals, claims against Great Britain—a neutral—for war risk insurance premiums paid by such nationals, based on the theory that the risks insured against which never matured into actual losses, were created by Great Britain's unneutral acts.

In this case the United States—both as a neutral and a belligerent—is asserting on behalf of its nationals, claims against Germany—a belligerent—for war-risk insurance premiums paid by such nationals, based on the theory that the risks insured against, which never matured into actual losses, were created by Germany's acts.

In the Alabama case it appeared that while the activities of the inculpatated cruisers for which Great Britain was held liable were; speaking generally, greater and more destructive than other Confederate cruisers, still the Confederate States had on the seas numerous other vessels preying on commerce of the United States. Great Britain, under the terms of the Treaty of Washington, could be held liable only for the losses inflicted by the acts of the inculpatated cruisers. Obviously, it was impossible to attribute the risks insured against solely to them.

In this case it is evident that during the period of neutrality *both* groups of belligerents freely resorted to "retaliatory measures" to the detriment of all neutral commerce, over the vigorous and repeated protests of the Government of the United States; and in both theory and in practice, as demonstrated by actual experience, the American nationals insured against the risks created by the acts of *both groups*; risks inevitably incident to the very existence of a state of war. Obviously it is impossible, therefore, to attribute these risks to the acts of Germany without holding her liable for all the consequences of the war, which under the treaty is not permissible.

In this group of claims there is no complaint of injury to or destruction or seizure of property by the acts of Germany or her agents. The sole complaint here is that the hazards of the war required the claimants as a matter of business prudence to protect by insurance against risks which never matured into damage to or destruction of the property insured, and the claimants seek to recover from Germany the cost to them of such insurance. Under the terms of the Treaty of Berlin as construed by Administrative Decisions Nos. I and II handed down this day, Germany is financially obligated to make full and complete compensation for all losses sustained by American nationals proximately caused by Germany's acts. But under the terms of that treaty Germany can not be held liable for all losses incident to the very existence of a state of war. To this class belong claims by American nationals for refund of premiums paid by them for insurance against the risks of possible losses which never occurred, risks in their very nature uncertain,

indefinite, indeterminable, and too remote to furnish a solid basis on which to rest a claim.

Done at Washington November 1, 1923.

EDWIN B. PARKER, *Umpire*.

Concurring in the conclusions:

CHANDLER P. ANDERSON,
American Commissioner.

W. KIESSELBACH,
German Commissioner.

ADMINISTRATIVE DECISION No. III

Dealing with the Liability of Germany for Damages in the Nature of Interest in All Claims Falling Within Administrative Decision No. I and also the Measure of Damages in All Claims for Property Taken

[DECEMBER 11, 1923]

Interest will not be awarded where the loss is neither liquidated nor the amount thereof capable of being ascertained by computation merely; but when the amount of loss shall have been fixed by the Commission the award made will bear interest from its date. To this class belong claims for losses based on personal injuries, death, maltreatment of prisoners of war, or acts injurious to health, capacity to work, or honor.

Where the loss is either liquidated or the amount thereof capable of being ascertained by computation merely, as of the time when the actual loss occurred, such amount, so ascertained, will be awarded with interest from the date of the loss. To this class belong claims for property taken, damaged, or destroyed.

PARKER, *Umpire*, delivered the opinion of the Commission, the American Commissioner concurring, and the German Commissioner concurring save as his dissent is indicated in the opinion:

For the guidance of the American Agent and the German Agent and their respective counsel there are here set down rules with respect to compensation or damages in the nature of interest in all claims falling within this Commission's Administrative Decision No. I^a and also with respect to the measure of damages in all claims for property taken. Reference is made to Administrative Decision No. I for the definition of terms used herein.

Under the Treaty of Berlin as construed by this Commission in that decision as supplemented by the application of Article 297 of the Treaty of Versailles (carried into the Treaty of Berlin) Germany is financially obligated to pay to the United States all losses of the classes dealt with in this opinion. The amounts of such obligations must be measured and fixed by this Commission.

There is no basis for awarding damages in the nature of interest where the loss is neither liquidated nor the amount thereof capable of being ascertained by computation merely. In claims of this class no such damages will be awarded, but when the amount of the loss shall have been fixed by this Com-

^a Printed in this JOURNAL, Vol. 18, No. 1 (Jan. 1924), pp. 175-176.

mission the award made will bear interest from its date. To this class belong claims for losses based on personal injuries, death, maltreatment of prisoners of war, or acts injurious to health, capacity to work, or honor.

But where the loss is either liquidated or the amount thereof capable of being ascertained with approximate accuracy through the application of established rules by computation merely, as of the time when the actual loss occurred, such amount, so ascertained, plus damages in the nature of interest from the date of the loss, will ordinarily fill a fair measure of compensation. To this class, which for the purposes of this opinion will be designated "property losses," belong claims for property taken, damaged, or destroyed.

Consideration will first be given to

Claims for Property Losses Arising During the Period of Neutrality

These in turn divide into

- (1) claims for property taken,
- (2) claims for property destroyed, and
- (3) claims for property injured or damaged but neither taken nor destroyed.

There are pending before the Commission numerous claims put forward by the United States on behalf of its nationals, in which compensation is sought for losses suffered by them through the taking of their property during the period of neutrality by Germany or her agents, and during the period of belligerency by Germany or her allies. The German Agent contends that the property was lawfully taken in each case as a war measure. Whether or not the property was taken for the needs of Germany in the prosecution of the war, in the exercise of the right of angary or otherwise, whether taken during the period of neutrality or the period of belligerency, whether taken in German territory, in territory occupied by Germany or her allies, or elsewhere, it will, for the purposes of this opinion, be assumed that it was in each case taken in conformity to the laws of war. This Commission, however, is not directly concerned with examining the quality of the acts causing the losses on which these claims are based, inasmuch as under the terms of the Treaty of Berlin Germany's obligation to pay is fixed.

The provisions of the Armistice require "*Reparation* for damage done." Throughout the Treaty of Berlin the provisions fixing Germany's pecuniary liabilities express the measure of her obligation in terms of "*compensation*" or "*reparation*." As pointed out by this Commission in that part of its opinion in *The Lusitania Cases*^b dealing with exemplary damages, pages 28-31, while there is no warrant in the Treaty of Berlin for the assessment of any penalty against Germany she is obligated (save where limited by the treaty terms) to make full, adequate, and complete *compensation* or *reparation* for all losses sustained by American nationals falling within its terms.

^b Printed in this JOURNAL, Vol. 18, No. 2 (April, 1924), pp. 361-373.

The ascertainment of the amount of such *compensation* is a judicial function—the task of this Commission.

Applying the principles announced in Administrative Decision No. II° at pages 7–8, the Commission holds that in all claims based on property taken and not returned to the private owner the measure of damages which will ordinarily be applied is the reasonable market value of the property as of the time and place of taking in the condition in which it then was, if it had such market value; if not, then the intrinsic value of the property as of such time and place.¹ But as compensation was not made at the time of taking, the payment *now* or at a later day of the value which the property had at the time and place of taking would not make the claimant whole. He was *then* entitled to a sum equal to the value of his property. He is *now* entitled to a sum equal to the value which his property then had plus the value of the use of *such sum* for the entire period during which he is deprived of its use. Payment must be made *as of* the time of taking in order to meet the full measure of compensation. This measure will be met by fixing the value of the property taken as of the time and place of taking and adding thereto an amount equivalent to interest at 5% per annum² from the date of the taking to the date of payment. This rule the commission will apply in all cases based on property taken during the period of neutrality.

The German Commissioner dissents from this conclusion and points out that it results in giving to American nationals with claims for property losses sustained during the period of American neutrality an advantage with respect to the element of damages in the nature of interest over Allied belligerents with similar claims arising during that period. While this is true, it is due to the fact that under both the Treaty of Versailles and the Treaty of Berlin the treatment of losses sustained during neutrality is quite different from the treatment of losses sustained during belligerency. In measuring compensation no restriction or limitation is found in either treaty on the right to allow damages in the nature of interest on the value of property lost during neutrality, although as hereinafter pointed out there is such a limitation with respect to property lost during belligerency. On the other hand, Germany is held liable for losses sustained by the nationals of the Allies who were belligerents against Germany during the period of American neutrality, in numerous cases where such losses were caused by Germany or *her allies*, and in other cases where such losses were caused by *any* belligerent; while during the same period Germany's liability for losses sustained by American nationals is limited to losses caused by Germany or *her agents*.

° Printed in this JOURNAL. Vol. 18, No. 1 (Jan. 1924), pp. 177–186.

¹ The measure of damages as here expressed is not contested by either the United States or Germany.

² Five per cent is the rate of interest prescribed by paragraph 16 of Annex II to Section I of Part VIII, and also by paragraph 22 of the Annex to Section III of Part X, of the Treaty of Versailles.

This difference in treatment places in some respects a greater burden on Germany in measuring damages in neutrality losses than in belligerency losses; but on the whole Germany's burden is much greater with respect to losses occurring during belligerency than with respect to similar losses occurring during neutrality. It is no more competent for this Commission to read into the treaty provisions reducing the heavier measure of damages in neutrality claims in order to make them balance with those arising during belligerency than it would be competent for it to read into the treaty provisions expanding Germany's liabilities arising during the period of neutrality so as to make them as broad as during the period of belligerency.

The German Agent contends that in all cases based on property taken during the period of neutrality no damages in the nature of interest should be awarded by this Commission but the awards when made should bear interest from their date at the rate of 5% per annum. While this contention must be rejected for reasons already indicated, the application of the rule he proposes will demonstrate its unsoundness.

Under the provisions of Section IV of Part X of the Treaty of Versailles (carried into the Treaty of Berlin) the nationals of the Allied Powers must be compensated by Germany for their property taken by Germany in German territory during the period of the belligerency of each as an Allied Power against Germany, such compensation to include an amount equivalent to interest at the rate of 5% per annum from the date of taking to the date of payment computed on the value of the property taken.³ If like compensation were denied to American nationals whose property was taken by Germany in German territory during the period of American neutrality and, as contended by German counsel, compensation in the form of interest should be computed only from the date of the award made by this Commission, then the following anomalies would result:

The value of property taken by Germany in German territory

- (a) during the period of American neutrality,
 - (1) belonging to Allied nationals,
would bear interest from the date of taking;
 - (2) belonging to American nationals,
would bear interest only from the date of the award made by this Commission;
- (b) during the period of American belligerency,
belonging either to American nationals or to Allied nationals, would bear interest from the date of taking.

It would follow that the value of property of Allied nationals taken by Germany in German territory, say on September 1, 1914, would bear interest

³ See paragraph (e) of Article 287, paragraph 14 of the Annex to Section IV of Part X, and paragraph 22 of the Annex to Section III of Part X, of the Treaty of Versailles.

The United States did not elect to become a party to the Treaty of Versailles or to present its claims to the Reparation Commission. By agreement with Germany it created this Commission, whose functions include, with others, those which would have been performed by the Reparation Commission had the claims of the United States been presented to it. The date of May 1, 1921, as found in the paragraph 16 above mentioned is, therefore, without significance in construing the Treaty of Berlin save as it is the date when all reparation claims of the Allies against Germany became liquidated and fixed and Germany notified of their aggregate amount. Reading paragraph 16 in the light of the other reparation provisions of the Treaty of Versailles, and applying it to the other provisions of the Treaty of Berlin, of which it forms a part, this Commission construes it to mean: All claims asserted under the reparation provisions for "material damage," as hereinbefore defined, shall, in accordance with the demand therefor made by the United States through its Agent, bear interest at the rate of 5% per annum from November 11, 1918. All other claims asserted under the reparation provisions shall bear interest only from the date of the award in each case by this Commission, at the rate of 5% per annum.

Claims for losses based on property taken during the period of belligerency by Germany or her agents (whether civil or military)⁷ in German territory are within the terms of paragraph (e) of Article 297 of the Treaty of Versailles (carried into the Treaty of Berlin), which, as here applied, in substance requires that Germany shall make compensation for all damage with respect to American property located in German territory as it existed on August 1, 1914, and taken or used by Germany during the period of belligerency, including interest at the rate of 5% per annum from the date of taking.⁸

Numerous factors, varying as the facts in the cases vary, must be considered in assessing damages in claims for losses sustained at any time during the war period based on property (1) damaged but not destroyed, (2) destroyed but replaced,⁹ or (3) taken but returned to the private owner. All questions concerning damages in the nature of interest in claims falling within these classes will, therefore, be dealt with in each case as presented.

From the foregoing the Commission deduces the following

Rules Governing Damages in the Nature of Interest

I. In all claims for losses wherever occurring based on property taken or destroyed by Germany or her agents during the period of neutrality, the measure of compensation expressed in awards made will be the amount fixed by the Commission as the value of such property, with interest thereon at

⁷ The German Commissioner dissents with respect to claims for losses based on property taken by German military authorities.

⁸ See the references contained in Note 3 *ante*.

⁹ See paragraph 12 (e) of Annex II to Section I of Part VIII of the Treaty of Versailles.

the rate of 5% per annum from the date of the actual loss, whether such loss occurred at the time of or after the taking or destruction, to the date of payment.

II. In all claims for losses based on property taken during the period of belligerency by Germany or her agents (whether civil or military) in German territory and not returned, the measure of compensation expressed in awards made will be the amount fixed by the Commission as the value of such property, with interest thereon at the rate of 5% per annum from the date of the actual loss, whether such loss occurred at the time of or after the taking, to the date of payment.

III. In all claims for losses wherever occurring based on property destroyed during the period of belligerency and not replaced, falling within classes (B) (2) (e) and (B) (3) (a) as defined in this Commission's Administrative Decision No. I, and also in all claims for losses based on property taken by Germany or her allies outside of German territory during the period of belligerency and not returned, the measure of compensation expressed in awards made will be the amount fixed by the Commission as the value of such property, with interest thereon at the rate of 5% per annum from November 11, 1918, to the date of payment.

IV. In all claims for losses wherever occurring sustained at any time during the war period based on personal injuries or on death, and in all claims arising during the period of belligerency falling within classes (B) (1), (B) (2) (a), (B) (2) (b), (B) (2) (c), (B) (2) (d), and (B) (3) (b) as defined in this Commission's Administrative Decision No. I, the measure of compensation expressed in awards made will not include damages in the nature of interest, but each award made will bear interest from its date at the rate of 5% per annum.

V. In all claims wherever arising for losses sustained at any time during the war period, based on property damaged but not destroyed, or on property destroyed and replaced, or on property taken and returned to the private owner, all questions concerning damages in the nature of interest will be dealt with by the Commission in each case as presented.

The awards which have been made by German tribunals in cases based on property taken, together with all their records in such cases, or certified copies of such awards and records, will be produced by the German Agent, where practicable, and will be considered here in assessing damages. The Commission will determine in each case the weight to be given such awards and records, dependent upon the parties before the German tribunal, the extent and nature of the evidence developed, and the nature of its award.

This opinion in so far as applicable will control the preparation, presentation, and decision of all claims falling within its scope submitted to the Commission. Whenever either Agent or his counsel is of the opinion that the peculiar facts of any case take it out of the rules here announced, such facts,

with the differentiation believed to exist, will be called to the attention of the Commission in the presentation of that case.

Done at Washington December 11, 1923.

EDWIN B. PARKER, *Umpire*.

Concurring:

CHANDLER P. ANDERSON,
American Commissioner.

Concurring, save as dissent is indicated in the opinion:

W. KIESSELBACH,
German Commissioner.

OPINION IN WAR-RISK INSURANCE PREMIUM CLAIM

United States of America on Behalf of Eastern Steamship Lines, Inc., Claimant, v. Germany

DOCKET NO. 436. [MARCH 11, 1924]

Claimant sought reimbursement for premiums paid for war-risk insurance placed on its vessels operating between points along the New England coast after the attack by a German submarine on American shipping off the Massachusetts coast on July 21, 1918. Claimant maintained the submarine attack was "the direct and proximate cause" of the insurance against war perils.

Held that the procuring of this insurance was not Germany's act but that of the claimant to provide against losses which never occurred. Such expenses are losses incident to the existence of a state of war, but they are not losses for which Germany is obligated to pay under the terms of the Treaty of Berlin.

PARKER, *Umpire*, delivered the opinion of the Commission, the American and German Commissioners concurring in the conclusions:—

The United States asserts this claim on behalf of the Eastern Steamship Lines, Inc., a Maine corporation, operating in 1918 a fleet of eight steamships in the freight and passenger service between points along the New England coast and as far south as New York, reaching the latter port through Long Island Sound and the Cape Cod Canal when open. On the morning of July 21, 1918, during the period of belligerency between the United States and Germany, the American tug *Perth Amboy*, owned by the Lehigh Valley Railroad, in which the claimant had no interest, with four light barges in tow, when about two miles off shore on the Massachusetts coast was attacked by a German submarine. The barges were sunk by her gunfire and the *Perth Amboy* was set on fire by explosive shells and burned but not sunk. Following this attack and because of it, the claimant at once covered its vessels operating in these and near-by waters with war-risk insurance, which it renewed, and most of which it continued to carry until after the Armistice of November 11, 1918, at a cost to it in premiums of \$17,351.19. This claim is asserted to recover the amount of these premiums with interest.

The American counsel contends that the facts in this case take it out of the principles and rules announced by this Commission November 1, 1923,

in its opinion in War-Risk Insurance Premium Claims* (pages 33-59 of Decisions and Opinions), and that the aggregate amount of the premiums paid by this claimant for insurance against war perils is a loss to it proximately resulting from Germany's act, to pay which Germany is obligated under the Treaty of Berlin.

The basis of the demand, as stated in the claimant's brief, is that the submarine attack on the *Perth Amboy* was "the direct and proximate cause of this claimant's taking out insurance against war perils" and therefore "the legal connection between the threatened destruction and the insurance is completely established." The argument rests on a false premise. The losses proximately resulting from the submarine attack within the meaning of the Treaty of Berlin were the damage to the tug *Perth Amboy* and the destruction of the barges which it had in tow. These offensive operations of Germany off the coast of her then enemy doubtless did create a fear in the mind of the president of the claimant corporation for the safety of claimant's property and that fear may have influenced the claimant in doing a number of different things to protect its physical properties, the lives of its employees, and to preserve its established business. But the expenses incurred by it in taking such measures, on its own volition and in the exercise of its own discretion, were simply incident to the existence of a state of war in which the United States was then a participant and in no sense losses, damages, or injuries caused by Germany or her allies within the meaning of the Treaty of Berlin.

The claimant's ships were never attacked by or in any way injured or damaged by Germany or her allies. It may be that business prudence required that claimant protect its property as far as practicable, through war-risk insurance against *threatened loss*. However, as pointed out in its brief, such insurance did not give it full protection against the losses which resulted from the warlike activities of a German submarine off the New England coast during the period when Germany was at war with the United States.

The claimant suffered losses in revenues from the falling-off of the passenger business because of this threatened danger from submarines. Suppose the claimant had, in the exercise of its discretion, in order to protect its established business, diverted it by rail and handled it during the period of belligerency through trackage arrangements with rail lines; could it recover now from Germany the additional cost to it of such an operation?

And if the claimant had arranged to handle its business by rail instead of by water, and as a result its masters and crews had been thrown out of employment, would the losses resulting to them have been attributable to Germany's act as a proximate cause?

Or suppose the claimant had continued the operation of its water lines but concluded that, in order to maintain its organization and as far as pos-

* Printed herein, *ante*, pp. 586-603.

sible protect its passenger business, it would, in addition to protecting its property, insure the lives of its masters, its crews, and its passengers, and also insure against injury to their persons; would the cost of such insurance have been a loss suffered by claimant as the proximate result of Germany's act?

Or suppose the summer residents on this coast, moved through fear of attack by hostile submarines, had not only covered their properties with war-risk insurance but temporarily leased and moved into other residences further inland out of reach of enemy guns; can expenses incurred in making such changes and in procuring such insurance be seriously treated as losses for which Germany is obligated to pay under the Treaty of Berlin?

These questions are put simply to illustrate the far-reaching application of the contention earnestly pressed by American counsel.

The proximate result of Germany's act complained of by claimant was the damaging of the tug *Perth Amboy* belonging to the Lehigh Valley Railroad and the destruction of the barges which it had in tow. One of the incidental results of Germany's offensive operations off the coast of her then enemy was to create in the mind of the president of the claimant corporation a fear of danger to its property, to partially protect against which the claimant incurred the expenses here sought to be recovered in procuring insurance against losses which were threatened but which in fact never occurred. Because of this fear, claimant's president, acting on his own volition and in the exercise of what, it is assumed, was business prudence, bought and paid for insurance against these threatened losses. The procuring of this insurance was not Germany's act but that of the claimant. The resulting expense was incurred not to repair a loss caused by Germany's act but to provide against what claimant's president feared Germany might do resulting in loss to it, although these fears were never realized. Such expenses are losses to claimant incident to the existence of a state of war, but they are not losses for which Germany is obligated to pay under the terms of the Treaty of Berlin, as construed by Administrative Decisions Nos. I and II and the opinion in War-Risk Insurance Premium Claims, all handed down by this Commission on November 1, 1923.

It results from the foregoing that this claim must be dismissed and it is hereby so ordered.

Done at Washington March 11, 1924.

Concurring in the conclusions:

EDWIN B. PARKER, *Umpire*.

CHANDLER P. ANDERSON,
American Commissioner.

W. KIESSELBACH,
German Commissioner.

OPINION CONSTRUING THE PHRASE "NAVAL AND MILITARY WORKS OR MATERIALS" AS APPLIED TO HULL LOSSES AND ALSO DEALING WITH REQUISITIONED DUTCH SHIPS

DOCKET NOS. 29, 127, and 546-556 inclusive. [MARCH 25, 1924]

The word "materials" is here used in a broad and all inclusive sense, with respect to all physical properties not attached to the soil; while the word "works" connotes physical properties attached to the soil.

The control by the United States Shipping Board of vessels, whether owned by the United States or held under requisition, does not create even a rebuttable presumption that such vessels had a military character.

If a ship when destroyed was being operated by the United States for purposes directly in furtherance of a military operation against Germany or her allies, Germany is not obligated to pay the loss; if it was not so operated, Germany is obligated to pay the loss.

General rules announced with respect to tests to be applied in determining when hull losses fall within the class of "naval and military works or materials."

PARKER, *Umpire*, delivered the opinion of the Commission, the German Commissioner concurring in the conclusions, and the American Commissioner concurring save as his dissent is indicated:

There is here presented a group of thirteen typical cases in which the United States, in some instances on its own behalf and in others on behalf of certain of its nationals, is seeking compensation for losses suffered through the destruction of ships by Germany or her allies during the period of belligerency. These claims do not embrace damages resulting from loss of life, injuries to persons, or destruction of cargoes but are limited to losses of the ships themselves, sometimes hereinafter designated "hull losses."¹

With the exception of the construction and the application to requisitioned Dutch ships of the phrase "property . . . belonging to" as found in paragraph 9 of Annex I to Section I of Part VIII of the Treaty of Versailles as carried by reference into the Treaty of Berlin, the sole question considered and decided in this opinion is: Were any or all of the thirteen hulls in question when destroyed "naval and military works or materials" within the meaning of that phrase as used in that paragraph?

The cases in which an affirmative answer to this question is given must, on final submission, be dismissed on the ground that Germany is not obligated to pay such losses under the Treaty of Berlin. The cases in which a negative answer is given will be reserved by the Commission for further consideration of the other issues raised.

The Commission is not here concerned with the quality of the act causing the damage. The terms of the treaty fix and limit Germany's obligations to pay, and the Commission is not concerned with enquiring whether the act for which she has accepted responsibility was legal or illegal as measured by rules of international law. It is probable that a large percentage of the financial obligations imposed by said paragraph 9 would not arise under the

¹ Reference is made to definition of terms contained in Administrative Decision No. I. [Printed in this JOURNAL, Vol. 18, No. 1 (Jan. 1924), pp. 175-176.]

rules of international law but are terms imposed by the victor as one of the conditions of peace.

The phrase "naval and military works or materials" has no technical signification. It is not found in previous treaties. It has never been construed judicially or by any administrative authority save the Reparation Commission. The construction by that body is not binding on this Commission nor is it binding on Germany under the Treaty of Berlin. It will, however, be considered by this Commission as an early *ex parte* construction of this language of the treaty by the victorious European Allies who participated in drafting it and are the principal beneficiaries thereunder.

The construction of this phrase is of first impression, and the Commission must, in construing and applying it, look to its context. It is found in the principal reparation provisions of the Treaty of Versailles as embraced in Article 232 and the Annex I expressly referred to therein. That article, after reciting that the "Allied and Associated Governments recognize that the resources of Germany are not adequate . . . to make complete reparation for all" losses and damages to which they and their nationals had been subjected as a consequence of the war, provides that:

The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by such aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto.

It is apparent that the controlling consideration in the minds of the draftsmen of this article was that Germany should be required to make *compensation* for all damages suffered by the *civilian population* of each of the Allied and Associated Powers during the period of its belligerency. It was the reparation of the private losses sustained by the *civilian population* that was uppermost in the minds of the makers of the treaty rather than the public losses of the governments of the Allied and Associated Powers which represented the cost to them of prosecuting the war.²

Article 232 makes express reference to "Annex I hereto" as more particularly defining the damages for which Germany is obligated to make compensation. Annex I provides that "Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the

² The reparations provided for in the exchange of notes between the United States and Germany culminating in the Armistice of November 11, 1918, executed by the military representatives of the belligerent powers, were limited to reparations for losses to the civilian population. The Lansing note of November 5, 1918, provides that the Allied Powers "understand that compensation will be made by Germany for all damage done to the *civilian population* of the Allies and their property by the aggression of Germany by land, by sea, and from the air."

Italics appearing throughout this opinion are, as a rule, added by the Commission.

following categories." Then follows an enumeration of ten categories, of which Nos. 1, 2, 3, 4, 8, and 10 deal solely with damages suffered by the civilian populations of the Allied and Associated Powers. Categories 5, 6, and 7 deal with reimbursement to the governments of the Allied and Associated Powers as such of the cost to them of pension and separation allowances, rather than damages suffered by the "civilian population." The Government of the United States has expressly committed itself against presenting claims arising under these three categories.³ There remains of the 10 categories enumerated in Annex I only category 9, which reads:

(9) Damage in respect of all property wherever situated belonging to any of the Allied or Associated States or their nationals, with the exception of naval and military works or materials, which has been carried off, seized, injured or destroyed by the acts of Germany or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war.

Under the terms of this paragraph arise Germany's financial obligations, if any, to pay the claims now before this Commission for the hulls destroyed during the period of belligerency.

It cannot be doubted that the language of this paragraph 9 so expands that used in Article 232 as to include certain property losses sustained by the governments of the Allied and Associated Powers as well as the losses sustained by their "civilian populations." It was found that property belonging to the victorious Powers not designed or used for military purposes had been destroyed or damaged, so in addition to requiring that Germany compensate the civilian population for their property losses this paragraph requires that Germany shall also compensate those governments for government losses suffered through destruction or damage with respect to property of a non-military character. Much property belonging to the governments of the victorious Powers, especially to the governments of the European Allies, and not impressed by reason of its inherent nature or of its use with a military character, had been destroyed or damaged. Under this provision it is clear that Germany is obligated to compensate the governments suffering such losses. But, reading the reparation provisions as a whole, it is equally clear that the Allied and Associated Powers did not intend to require that Germany should compensate them, and that Germany is not obligated to compensate them, for losses suffered by them resulting from the destruction or damage of property impressed with a military character either by reason of its inherent nature or by the use to which it was devoted at the time of the loss. Property so impressed with a military character is embraced within the phrase "naval and military works or materials" as used in paragraph 9, which class described by this phrase will sometimes hereinafter be referred to as "excepted class."

³ See Note 11 of Administrative Decision No. II, pages 14 and 15 of Decisions and Opinions of this Commission. [Printed in this JOURNAL, Vol. 18, No. 1 (Jan. 1924), pp. 177-186.]

This phrase, in so far as it applies to hulls for the loss of which claims are presented to this Commission, relates solely to ships operated by the United States, not as merchantmen, but directly in furtherance of a military operation against Germany or her allies. A ship privately operated for private profit cannot be impressed with a military character, for only the government can lawfully engage in direct warlike activities.

By the terms of the Treaty of Versailles, the French and English texts are both authentic. The French word "*matériel*," in the singular, is used in the French text, against which the English word "materials," in the plural, is used in the English text. Littré, whose dictionary is accepted as an authority on the French language, defines "*matériel*" thus: "The articles of all kinds taken as a whole which are used for some public service in contradistinction to personnel," and he gives as an example *matériel* of an army, the baggage, ammunition, etc., as distinguished from the men.

The Century Dictionary defines this French word thus: "The assemblage or totality of things used or needed in carrying on any complex business or operation, in distinction from the *personnel*, or body of persons, employed in the same: applied more especially to military supplies and equipments, as arms, ammunition, baggage, provisions, horses, wagons, etc."

The English word "materials" means the constituent or component parts of a product or "that of or with which any corporeal thing is or may be constituted, made, or done" (Century Dictionary).

Reading the French and English texts together, it is apparent that the word "materials" is here used in a broad and all inclusive sense, with respect to all physical properties not attached to the soil, pertaining to either the naval or land forces and impressed with a military character; while the word "works" connotes physical properties attached to the soil, sometimes designated in military parlance as "installations," such as forts, naval coast defenses, arsenals, dry docks, barracks, cantonments, and similar structures. The term "materials" as here used includes raw products, semi-finished products, and finished products, implements, instruments, appliances, and equipment, embracing all movable property of a physical nature from the raw material to the completed implement, apparatus, equipment, or unit, whether it were an ordinary hand grenade or a completed and fully equipped warship, provided that it was used by either the naval or land forces of the United States in direct furtherance of a military operation against Germany or her allies.

While it is difficult if not impossible to so clearly define the phrase "naval and military works or materials" that the definition can be readily applied to the facts of every claim for the loss of a hull pending before this Commission, the true test stated in general terms is: Was the ship when destroyed being operated by the United States for purposes directly in furtherance of a military operation against Germany or her allies? If it was so operated, then it is embraced within the excepted class and Germany is not obligated to

pay the loss. If it was not so operated, it is not embraced within the excepted class and Germany is obligated to pay the loss.

The United States Shipping Board (sometimes hereinafter referred to as "Shipping Board") exerted such a far-reaching influence over American shipping both prior to and during the period of American belligerency that the scope and effect of its activities and powers must be clearly understood in order to reach sound conclusions with respect to the cases here under consideration.

The Shipping Board was established in pursuance of the act of the Congress of the United States of September 7, 1916 (39 Statutes at Large 728), entitled "An act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes." The act as amended provided that the members of the board should be appointed by the President subject to confirmation by the Senate; that they should be selected with due regard for the efficient discharge of the duties imposed on them by the act; that two should be appointed from States touching the Pacific Ocean, two from States touching the Atlantic Ocean, one from States touching the Gulf of Mexico, one from States touching the Great Lakes, and one from the interior, but that not more than one should be appointed from the same State and not more than four from the same political party. All employees of the board were selected from lists supplied by the Civil Service Commission and in accordance with the civil-service law. The board was authorized to have constructed and equipped, as well as "to purchase, lease, or charter, vessels *suitable, as far as the commercial requirements of the marine trade of the United States may permit*, for use as naval auxiliaries or Army transports, or for other naval or military purposes."

The President was authorized to transfer "either permanently or for limited periods to the board such vessels belonging to the War or Navy Department *as are suitable for commercial uses* and not required for military or naval use in time of peace."

Provision was made for the American registry and enrollment of vessels purchased, chartered, or leased from the board and it was provided that "Such vessels *while employed solely as merchant vessels* shall be subject to all laws, regulations, and liabilities governing merchant vessels, *whether the United States be interested therein as owner*, in whole or in part, or hold any mortgage, lien, or other interest therein."

The board was authorized to create a corporation with a capital stock of not to exceed \$50,000,000 "for the purchase, construction, equipment, lease, charter, maintenance, and operation of *merchant vessels in the commerce of the United States*." In pursuance of this latter provision the United States

Shipping Board Emergency Fleet Corporation (sometimes hereinafter referred to as "Fleet Corporation") was organized under the laws of the District of Columbia with a capital stock of \$50,000,000, all fully paid and all held and owned by the United States save the qualifying shares of the trustees. Under the terms of the act, this corporation could not engage in the *operation* of vessels owned or controlled by it unless the board should be unable to contract with citizens of the United States for the purchase or operation thereof.

Then followed in the act numerous provisions clothing the board with broad powers with respect to transportation by water of passengers or property in interstate and foreign commerce, provisions for investigations and hearings, for the fixing of maximum rates, and for penalties for failure to observe the terms of the statutes and the orders of the board.

The act as amended provided that it "may be cited as 'Shipping Act, 1916.'" The board created by virtue of its terms possessed none of the indicia of a military tribunal. Its members, all civilians, were drawn from remote sections, that the board might represent the commercial and shipping interests of the entire nation. The act taken in its entirety indicates that the controlling purpose of the Congress was to promote the development of an American merchant marine and also "*as far as the commercial requirements of the marine trade of the United States may permit*" provide vessels susceptible of "use as naval auxiliaries or Army transports, or for other naval or military purposes." This act was approved September 7, 1916, during the period of American neutrality. The World War had found American nationals engaged in an extensive foreign commerce but without an adequate merchant marine to keep it afloat. The channels of American foreign commerce would have been choked but for the use of belligerent bottoms with the resultant risks. This situation, coupled with the possibility of the developments of the war forcing American participation therein, prompted the enactment of this statute for the creation of a merchant marine and setting up the machinery for the mobilization and control of all American shipping.

Following America's entrance into the war on April 6, 1917, Congress through the enactment of several statutes clothed the President of the United States with broad powers including the taking over of title or possession by purchase or requisition of constructed vessels or parts thereof or charters therein and the operation, management, and disposition of such vessels and all other vessels theretofore or thereafter acquired by the United States. From time to time through executive orders the President, being thereunto duly authorized, delegated these powers with respect to shipping to the Shipping Board, to be exercised directly by it or, in its discretion, by it through the Fleet Corporation.

Under these powers the Shipping Board and the Fleet Corporation proceeded to requisition the use of all power-driven steel cargo vessels of Ameri-

can registry of 2,500 tons dead weight or over and all passenger vessels of American registry of 2,500 tons gross registry or over, adapted to ocean service. Immediately upon the execution of these requisition orders a "requisition charter" was entered into between the Shipping Board and the owner, fixing the compensation to be paid by the United States to the owner for the use of the vessel and providing for the operation of the vessel on what was known as the "time-form" basis, the board reserving the right to change the charter to a "bare-boat" basis on giving five days' notice. The time-form basis provided for the operation of the vessel by the owner as agent of the United States and fixed the terms and conditions of such operation, stipulating among other things that the owner should pay all expenses of operation, including the wages and fees of the master, officers, and crew, and should assume all marine risks including collision liabilities, but that the United States should assume all war risks. The Shipping Board directed the owner as its agent to operate the vessel in its regular trade. The bare-boat basis provided that all the expenses of manning, victualling, and supplying the vessel and all other costs of operation should be borne by the United States. This latter form was used in requisitioning ships for service in the War Department, and also in some other instances where requisitioned ships were delivered by the Shipping Board to third parties to operate as agents of the United States. When a ship was delivered by the Shipping Board to the War Department no formal agreement was entered into between these two government agencies but the War Department recognized the agreement between the Shipping Board and the owner of the vessel and duly accounted to the Shipping Board under the terms and conditions of the requisition charter.

When the requisitioned vessel was redelivered to the owner for operation by him under a time-form requisition charter, an "operating agreement" was also entered into between the Fleet Corporation, acting for the United States, and the owner, whereby the owner as agent of the Fleet Corporation undertook the operation of the vessel including the procurement of cargoes and the physical control of the ship. For these services the owner as agent received stipulated fees and commissions in addition to the compensation which he received as owner for the use of the vessel as provided in the requisition charter.

When the vessel was requisitioned under a bare-boat form charter and delivered to a third party other than an established government agency to operate, a "managing agreement" was entered into between the Fleet Corporation and such third party whereby the latter as agent for the Fleet Corporation assumed physical control of the ship, receiving fees and commissions for such services.

It was not the practice of the Shipping Board or the Fleet Corporation to issue detailed and minute instructions to agents operating requisitioned vessels with respect to the conduct of the particular voyage or the particular

cargoes which such vessels should carry. These operating or managing agents were selected because of their experience and ability in handling commercial shipping. While the United States reserved to itself full power and authority to exercise complete control over vessels requisitioned by it, such control was in practice delegated to the operating or managing agent, who exercised his sound discretion in the management of ships operated by him as agent, with a view to preventing any unnecessary dislocation of trade or disturbance in the established channels of commerce.

Thus the United States through the agencies of the Shipping Board and the Fleet Corporation effectively and speedily mobilized all American shipping, exercising such control over it that, as emergency required, it could be immediately utilized by the United States in the prosecution of its military operations against its enemies; but pending such emergency the requisitioned vessels were commercially operated, by their owners or by third parties, as agents of the United States, and these agents were given the greatest latitude and freedom of action in the management and control of vessels operated by them in order to prevent any unnecessary disturbance in the free movement of commerce. Under the requisition charter it was expressly stipulated that the vessel "*shall not have the status of a Public Ship*, and shall be subject to all laws and regulations governing merchant vessels When, however, the requisitioned vessel is engaged in the service of the War or Navy Department, the vessel shall have the status of a Public Ship, and . . . the master, officers, and crew shall become the immediate employees and agents of the United States, with all the rights and duties of such, the vessel passing completely into the possession and the master, officers, and crew absolutely under the control of the United States." At another point in the requisition charter it was stipulated that the master "*shall be the agent of the owner in all matters respecting the management, handling, and navigation of the vessel, except when the vessel becomes a Public Ship.*"

The German Agent contends that presumptively the control by the Shipping Board thus exercised over vessels, whether owned by the United States or held by the United States under requisition, was in furtherance of the conduct of the military effort of the United States against Germany, and hence—in the absence of satisfactory proof to the contrary, the burden being on the United States—all such vessels must be classed as "naval and military works or materials." The Commission has no hesitation in rejecting this contention. After America entered the war, its entire commerce and industry were in a broad sense mobilized for war. Because of the urgent war requirements, steel and numerous other products became government-controlled commodities, their uses being rigidly restricted to war purposes. Yet it cannot be contended that the fact that an American steel plant was operated 100% on war work raised a *prima facie* presumption of its conversion into "military works." The railroads of the United States were taken over and operated by the government as a war measure, but this did not presump-

tively convert them into "military works or materials" within the meaning of that term as used in the Treaty of Versailles. Nor can the mobilization for war of American shipping through the agency of the Shipping Board create even a rebuttable presumption that the vessels so mobilized, whether owned or requisitioned by the United States, had a military character. Nothing short of *their operation by the United States directly in furtherance of a military operation against Germany* can have such an effect. So long as such vessels were performing the functions of merchant vessels, even though engaged in a service incident to the existence of a state of war, they will not fall within the excepted class.

Construing the Shipping Act, the executive orders of the President, and the provisions of an operating agreement similar to that hereinbefore described, the Supreme Court of the United States held a vessel *owned* by the Fleet Corporation but operated by an American national as an agent of the Shipping Board was a merchant vessel and subject to libel in admiralty for the consequences of a collision.⁴ It is apparent that a vessel either owned or requisitioned by the Shipping Board or Fleet Corporation and operated by an agent of the United States under such an operating or managing agreement as hereinbefore described was a merchantman and in no sense impressed with a military character.

When, however, the Shipping Board delivered such vessels to either the War Department or the Navy Department of the United States their status at once changed and they became public ships, their masters, officers, and crews at once became employees and agents of the United States with all of the resultant rights and duties; and it will be presumed that such delivery was made to the military arms of the government to enable them to be used (in the language of section 5 of the Shipping Act) "*as naval auxiliaries or Army transports, or for other naval or military purposes.*" Such assignment of vessels to and their operation by the War Department or the Navy Department will be treated by the Commission as *prima facie* but not conclusive evidence of their military or naval character. The facts in each case will be carefully examined and weighed by the Commission in order to determine whether or not the particular ship, at the time of her destruction, was operated by the United States directly in furtherance of a military operation against Germany or her allies. If she was so operated, she will fall within the excepted class; otherwise she will not.

The application of this general rule to the facts as disclosed by the records in the thirteen typical cases preliminarily submitted will illustrate its scope and its limitations.

Case No. 127, Steamship *Rockingham*.

The steamship *Rockingham*, owned and operated by the Garland Steamship Corporation, an American national, sailed on April 16, 1917, from

⁴ The *Lake Monroe* (1919), 250 U. S. 246.

Baltimore, Maryland, via Norfolk, Virginia, which she left April 19, bound for Liverpool, England, with a general cargo for numerous consignees. She was armed for defensive purposes with two 4-inch guns, one fore and one aft, manned by a civilian crew of 36, and in addition had a naval gun crew of 13 enlisted men. She was sunk by a German submarine on May 1, 1917, before reaching Liverpool. In the early part of the afternoon of May 1, the weather being hazy, two small objects were sighted by the *Rockingham* at a distance of approximately five miles, one on the starboard bow, the other on the port quarter, and assuming that they were German submarines the master steered a zig-zag course in accordance with instructions issued by the United States Navy Department designed to elude the operations of hostile submarines. The two objects were seen to submerge and thereafter were not sighted until after the sinking. The gun crew of the *Rockingham* had, therefore, no target to fire upon, and no effort was made at resistance. The attack was upon the starboard side, was made without warning, the torpedo entering the engine room, tearing a great hole in the ship and causing her to sink in 25 minutes.

The German Agent contends that the *Rockingham* at the time of her destruction had lost her status as a private peaceful trading ship and had become "naval and military . . . materials" as that term is used in the treaty because: (1) she was armed, (2) her guns were manned by a naval gun crew, (3) she was operated in accordance with instructions given by the Navy Department of the United States although by a civilian master with a civilian crew. The contention is that, notwithstanding such arming and manning and operation may have been entirely legal and justified, they nevertheless stripped the *Rockingham* of her character of a peaceful merchantman and impressed her with a military character.

This contention must be rejected. It is clear that the *Rockingham* was being privately operated by an American national for private profit. She was armed in pursuance of the policy adopted by the Government of the United States, of which all foreign missions in Washington were given formal notice on March 12, 1917, during the period of American neutrality, in the following language:

In view of the announcement of the Imperial German Government on January 31, 1917, that all ships, those of neutrals included, met within certain zones of the high seas would be sunk without any precautions being taken for the safety of the persons on board, and without the exercise of visit and search, the Government of the United States has determined to place upon all American merchant vessels sailing through the barred areas an armed guard for the protection of the vessels and the lives of the persons on board.

The instructions given by the Navy Department of the United States to the masters of these merchant vessels and to the commanders of the naval gun crews clearly indicate that the purpose of so arming and operating such

vessels was to *protect against* the offensive operations of German submarines and to elude or escape from them if possible, and not to initiate offensive operations against such submarines. The control in the nature of routing instructions which the civilian masters received from the Navy Department and followed was designed to avoid and to escape from the submarines, not to seek them out and destroy them.

The arming for defensive purposes of a merchantman and the manning of such armament by a naval gun crew, coupled with the routing of such ship by the Navy Department of the United States for the purpose of avoiding the danger of submarines and the following by the civilian master of the ship of instructions given by the Navy Department for the defense of the ship when in danger of attack by submarines, certainly do not change the juridical status of the ship or convert it from a merchant-ship to a war-ship or make of it naval material.

The Commission holds that the *Rockingham* at the time of her destruction was being operated as a merchant vessel and that she does not fall within the excepted class.

Case No. 551, Steamship *Motano*—Oil Tanker.

The steamship *Motano*, owned and operated by the Standard Oil Company of New Jersey, an American national, sailed from New York on July 6, 1917, with a cargo of fuel oil for account of the British Ship Control for use of the British Admiralty. She left Plymouth with other vessels convoyed by three British destroyers for Portsmouth, England, as her final discharge port. She was armed for defensive purposes with two 3-inch guns, one fore and one aft, and had a civilian master and crew of 33 men and a gun crew of 13 enlisted men of the United States Navy. She was sunk on July 31, 1917, on her voyage between Plymouth and Portsmouth by a torpedo fired by a German submarine. The air was hazy, the sea choppy, the submarine had not been sighted, and no resistance was made by the naval gun crew. The *Motano* was insured with the British Government for \$616,000, which sum has been paid to the claimant, and this claim is made for the difference between that amount and the true value of the vessel, which difference is placed at the sum of \$594,000, plus interest and expenses.

The German Agent contends that the *Motano* at the time of her destruction constituted "naval . . . works or materials" because (1) she carried armament susceptible of use for hostile purposes and was manned by a naval gun crew, (2) she was convoyed by regular fighting forces of a belligerent Power, and (3) she was controlled by the belligerent British Government and used for warlike purposes. The Commission rejects this contention because it is apparent that the *Motano* was privately owned and privately operated for private profit, was not employed or designed to be employed directly in furtherance of a military operation of the United States or its associated Powers against Germany or her allies, and was not impressed with a military character.

We have heretofore examined the test of armament manned by a naval gun crew on a privately operated commercial ship and held that it did not have the effect of converting such ship into naval material.

The German Agent with great earnestness and ability insists that a ship associating itself with a belligerent convoy assumes the character of its associates and that when it becomes a part of the convoy flotilla, which is a military unit and subject to naval instructions and naval control, it participates in hostilities and must be classed as naval material. We have no quarrel with the contention that a vessel, whether neutral or belligerent, forming part of a convoy under belligerent escort may, through the methods prescribed by international law, be lawfully condemned and destroyed as a belligerent. But that is not the question before this Commission. If we assume that the *Motano*—a belligerent merchantman—was lawfully destroyed, this does not affect the result. The fact that the *Motano*, because of its helpless and non-military character, sought the protection of a convoy and voluntarily subjected itself to naval instructions as to routing and operation, for the purpose of avoiding the German submarines rather than seeking them out to engage them in combat, certainly can not, by some mysterious and alchemic process, have the effect of transforming the ship from a merchantman into naval material. The control exercised by the British Government over the *Motano* was not such as to affect its status. Such control was limited to directions looking to the protection of the vessel and the furtherance of its commercial activities; and not directly in furtherance of any military operation against Germany or her allies.

The Commission therefore concludes that the *Motano* at the time of her destruction maintained her character as a peaceful commercial vessel and that she does not fall within the excepted class.

Case No. 29, Steamship *Pinar del Rio*.

The steamship *Pinar del Rio*, owned by the American and Cuban Steamship Line, Incorporated, an American national, was requisitioned by the United States through the Shipping Board, and a time-form requisition charter was entered into February 4, 1918. By the terms of this charter the owner became the agent of the Shipping Board and as such continued to operate the ship. She was unarmed and manned by a civilian crew. While en route from Cuba to Boston with a cargo of sugar she was sunk, on June 8, 1918, through gunfire by a German submarine.

It is apparent that at the time of her destruction she was being operated as a merchant vessel and in no sense impressed with a military character. She does not, therefore, fall within the excepted class.

Case No. 550, Steamship *Rochester*—Oil Tanker.

The steamship *Rochester*, owned and operated by the Rochester Navigation Corporation, an American national, after having discharged a general cargo at Manchester, England, sailed from that port in ballast October

26, 1917. She was armed for defensive purposes with two 3-inch guns, mounted one fore and one aft, and had a civilian crew of 36 men and a naval gun crew of 13 men. After leaving Manchester she with nine other merchantmen was convoyed for several days by five destroyers and one armed cruiser, and, after the convoying ships returned to their base, the *Rochester* was sunk on November 2, 1917, by a torpedo and shells fired from a German submarine.

It is apparent that the *Rochester* at the time of her destruction was being operated as a merchant vessel and was not in any sense impressed with a military character. The Commission, therefore, finds that the *Rochester* does not fall within the excepted class.

Case No. 555, Steamship *Moreni*—Oil Tanker.

The steamship *Moreni*, owned and operated by the Standard Oil Company of New Jersey, an American national, sailed from Baton Rouge, Louisiana, May 19, 1917, with a cargo of gasoline consigned to the Italian-American Oil Company at Savona, Italy, to call at Gibraltar for orders. She was armed for defensive purposes with two 4-inch guns, one fore and one aft, and manned with a civilian crew of 35 and a naval gun crew of 12. After calling at Gibraltar for orders she sailed from that port June 10, 1917, and on the morning of June 12 was fired upon and finally sunk by a German submarine after a running fight in which the *Moreni* endeavored to escape and in which 200 to 250 shots were fired by the submarine and about 150 shots by the *Moreni*.

It is apparent that the *Moreni* was at the time of her destruction being privately operated for private profit as a merchant vessel, and for the reasons heretofore given the Commission holds that she does not fall within the excepted class.

Case No. 549, Steamship *Alamance*.

The steamship *Alamance*, owned by the Garland Steamship Corporation, an American national, was requisitioned by the Shipping Board October 20, 1917, and at once redelivered to the Garland Steamship Corporation under a time-form requisition charter, executed December 28, 1917, by the terms of which the owner operated the vessel as agent of the Shipping Board. She was manned with a civilian crew of 38 men, armed for defensive purposes with two 4-inch guns, one fore and one aft, which were manned by a naval gun crew of 19 men. On February 5, 1918, while en route from Hampton Roads, Virginia, to Liverpool, England, with a cargo consisting principally of tobacco, cotton, zinc, and lumber, and while in a convoy of 15 ships escorted by naval vessels, she was torpedoed and sunk by a German submarine.

For the reasons heretofore given the Commission holds that at the time of her destruction the *Alamance* was a merchant vessel and that she does not fall within the excepted class.

Case No. 553, Steamship *Tyler*.

The steamship *Tyler*, owned by the Old Dominion Steamship Company, of New York, an American national, was requisitioned by the Shipping Board November 29, 1917, and a time-form requisition charter executed on January 4, 1918. On March 2, 1918, the Shipping Board entered into an operating agreement with Chase Leaveth and Company by the terms of which they operated the *Tyler* as agent of the Shipping Board, and she was being so operated at the time of her destruction. She was manned by a civilian crew, armed for defensive purposes with two 3-inch guns, one fore and one aft, which were manned by a naval gun crew of 19 men. On April 30, 1918, the *Tyler* left Genoa, Italy, in convoy, bound for New York in ballast. On May 2, 1918, she was sunk by torpedoes fired by a German submarine.

For the reasons hereinabove given the Commission holds that at the time of her destruction the *Tyler* was a merchantman in no sense impressed with a military character, and hence is not within the excepted class.

Case No. 554, Steamship *Santa Maria*—Oil Tanker.

The steamship *Santa Maria*, owned by the Sun Company, an American national, was requisitioned by the Shipping Board October 12, 1917, delivered on January 14, 1918, and on the same day redelivered to the owner, which operated her as agent of the Shipping Board under a requisition agreement constituting a part of the requisition charter. She sailed from Chester, Pennsylvania, the latter part of January, 1918, via Norfolk, Virginia, bound for Great Britain in convoy with a cargo of fuel oil. She was manned by a civilian crew of 39 men, armed with two 4-inch guns, one fore and one aft, and had a naval gun crew of 22 men. On February 25, while under convoy of British trawlers, she was sunk by a torpedo fired by a German submarine.

The Commission holds that at the time of her destruction the *Santa Maria* was a merchant vessel and that she does not fall within the excepted class.

Case No. 552, Steamship *Merak*.

By virtue of a proclamation of the President of the United States of March 20, 1918, 87 vessels of Holland registry and belonging to her nationals, lying in American ports, were, in accordance with international law and practice, requisitioned by the United States, the President in his proclamation directing that the Shipping Board "make to the owners thereof full compensation, in accordance with the principles of international law." Of these vessels 46, including the steamships *Merak* and *Texel*, were delivered to the Shipping Board.

The *Merak* was operated as a merchantman by Wessel Du Val and Company, American nationals, as agents of the Shipping Board. She sailed under the American flag, was unarmed, and was manned by a civilian crew. While en route from Norfolk, Virginia, to Chile with a cargo of 4,000

tons of coal she was, on August 6, 1918, captured by a German submarine and sunk by bombs.

Case No. 556, Steamship *Texel*.

As appears from the statement made in connection with the *Merak* case *supra*, the steamship *Texel* was one of the Dutch ships requisitioned by the United States and assigned to the Shipping Board, after which she was operated by the New York and Porto Rico Steamship Company as agent for the Shipping Board. She was unarmed and manned by a civilian crew. She sailed under the American flag from Ponce, Porto Rico, on May 27, 1918, for New York with a cargo of sugar. On June 2 she was attacked by a German submarine, overhauled, and sunk by bombs.

It is apparent that the steamships *Merak* and *Texel* were at the time of their destruction being operated as merchant vessels and in no sense impressed with a military character. For the reasons heretofore given the Commission holds that neither the steamship *Merak* nor the steamship *Texel* falls within the excepted class and that neither can in any sense be held to have constituted "naval and military works or materials" as that phrase is used in the treaty.

But notwithstanding this holding the German Agent contends that these claims do not fall within the terms of the Treaty of Berlin because these Dutch ships were not vessels "*belonging to*" the United States or its nationals as that term is used in the paragraph 9 here under consideration. That these ships were lawfully requisitioned, reduced to possession, and operated by the United States is conceded by Germany. It results that at the time of their destruction the right of the United States to possess and use them against all the world was absolute and superior to any possible contingent rights or interests of those Dutch nationals who owned them at the time they were requisitioned. That the United States had at least a special or qualified property in these ships there can be no doubt. They were lawfully in its possession, sailing under its flag, used as it saw fit without regard to the wishes of the former owners and during an emergency the duration of which the United States alone could determine. There never was a time when the Dutch nationals who owned the ships at the time they were requisitioned could, as a matter of right, demand their return or impose any limitation whatsoever upon their operation or control. As the United States had the absolute right against the whole world to possess these ships and use them as it saw fit, conditioned only upon the duty to make adequate compensation for their use and to return them, at a time to be determined by it or in the alternative to make adequate compensation, to the Dutch nationals who owned them at the time they were requisitioned, certain it is that this amounted to a special or qualified property in the ships tantamount to absolute ownership thereof for the time being. The possession of the United States was analogous to that of a grantee having an estate defeasible upon the happening of some event completely within his control.

Where under the terms of a trip or time charter the holder of the legal title delivers to the charterer the whole possession and control of the ship, the charterer becomes the "owner" thereof during the term of the charter and is designated as such.⁵ The British Merchant Shipping (Salvage) Act, 1916, provides that: "Where salvage services are rendered by any ship *belonging to His Majesty* . . . the Admiralty shall . . . be entitled to claim salvage . . . and shall have the same rights and remedies as if the ship . . . did not belong to His Majesty." The English courts have held that a ship requisitioned and operated by the government under requisition charter "belonged to" His Majesty within the terms of this act and hence was entitled to salvage.⁶ These decisions while helpful are not controlling in construing the phrase "Damage in respect of all property wherever situated *belonging to*" the United States or its nationals. "Belonging to" as here used is not a term of art or a technical legal term. It must be construed in the popular sense in which the word is ordinarily used, as synonymous with appertaining to, connected with, having special relation to. That it was used in this sense is evidenced by reference to this clause of the French text of the Treaty of Versailles, which reads: "Dommages relatifs à toutes propriétés, en quelque lieu qu'elles soient situées, appartenant à." The use of the word "appartenant" is significant. The expression "belonging to" does not necessarily convey the idea that the indefeasible legal title to the property "in respect of" which the damage occurred must have vested in the United States or its nationals. It is sufficient that the United States or its nationals had such control over and interest, general or special, in such property as that injury or damage to it directly resulted in loss to them. Had the draftsmen of the treaty intended to restrict Germany's obligations to pay for damages to property in which the unconditional legal title was vested in the Allied or Associated States or their nationals, they would have used apt and well-recognized terms to express such limitation. On the contrary, it is evident from reading the reparation provisions as a whole that their purpose and intention was to require Germany to pay all losses sustained by the Allied or Associated states or their nationals resulting from "Damage in respect of all property wherever situated" of a non-military character.

While not controlling, it is interesting to note that the Reparation Commission has placed a similar construction on the language in question, and gone a step further than here indicated in holding that "Time chartered neutral vessels in respect of which compensation was paid by the claiming

⁵ *Sandeman v. Scurr*, (1866) L. R. 2 Q. B. 86; *Marcardier v. Chesapeake Insurance Co.*, (1814) 8 Cranch 39, 49; *Reed v. United States*, (1871) 11 Wallace 591, 600; *Leary v. United States*, (1872) 14 Wallace 607, 610; *Kent's Commentaries*, 14th edition, Vol. III, page *138; *Scrutton, Charterparties and Bills of Lading*, 11th (1923) edition, Article 2, pages 4-5.

⁶ *Admiralty Commissioners v. Page and Others*, (1918) 2 K. B. 447, affirmed in (1919) 1 K. B. 299. See also *The Sarpén*, Court of Appeal, (1916) Probate Division, 306, 313; *Master of Trinity-House v. Clark*, (1815) 4 M. & S. 288.

Power might also be included [in computing the amount of Germany's reparation payments under paragraph 9 of Annex I], though not sailing under the flag of the Power in question."

It follows that the claims for losses resulting from the destruction of the steamships *Merak* and *Texel* fall within the terms of the Treaty of Berlin and that Germany is obligated to compensate for their loss.

Case No. 546, Steamship *John G. McCullough*.

The steamship *John G. McCullough*, owned by the United States Steamship Company, an American national, was requisitioned by the United States through the Shipping Board November 6, 1917, under a bare-boat requisition charter. On the same day she was delivered she was turned over to the War Department of the United States and operated with a British civilian crew 32 in number, employed and paid by and in all things subject to the orders of the United States War Department. Under the requisition charter she thereupon became a public ship.

She was armed with one *French* 90 mm. gun, which was manned by a *British* naval crew of two gunners. While en route, May 18, 1918, from London, England, in naval convoy to Rochefort, France, with a general cargo for the *Army of the United States*, she was destroyed, either by a torpedo from a German submarine, as claimed by the American Agent, or by a mine, which may or may not have been of German origin. The German Agent denies that she was torpedoed by a German submarine. The German Admiralty is without information with respect to her destruction. There is, however, evidence supporting the allegation that she was torpedoed; but in view of the disposition which the Commission will make of this case the cause of her destruction is not material.

At the time the *McCullough* was destroyed she was a public ship in the possession of and operated by the United States through its War Department, one of the military arms of the Government whose every effort was concentrated on mobilizing and hurling men and munitions against Germany. She had been requisitioned in European waters. America's associates in the war had assisted in manning and equipping her. France had supplied armament and Great Britain had supplied a naval gun crew. She was transporting from England to France supplies for the active fighting forces of the *Army of the United States*. She possessed every indicia of a military character save that she was not licensed to engage in *offensive* warfare against enemy ships. Offensive operation on the seas was not her function. The fact that the legal title to her had not vested in the United States is wholly immaterial. She was in the possession of the United States. It had the right against all the world to hold, use, and operate her and was in fact operating her through its War Department by a master and crew employed by and subject in every respect to the orders of the War Department. She was actively performing a service for the *Army* on the fighting

front. She possessed none of the indicia of a merchant vessel. The very requisition charter under which she was operating took pains to declare her a "public ship" and not a merchant vessel subject to the laws, regulations, and liabilities as such as was the *Lake Monroe*.⁷ She was at the time of her destruction being utilized for "other . . . military purposes" within the meaning of that phrase as used in section 5 of the Shipping Act. She was impressed with a military character.

The taxicabs privately owned and operated for profit in Paris during September, 1914, were in no sense military materials; but when these same taxicabs were requisitioned by the Military Governor of Paris and used to transport French reserves to meet and repel the oncoming German army, they became military materials, and so remained until redelivered to their owners. The automobile belonging to the United States assigned to its President and constitutional commander-in-chief of its Army for use in Washington is in no sense military materials. But had that same automobile been transported to the battle front in France or Belgium and used by the same President, it would have become a part of the military equipment of the Army and as such impressed with a military character. The steel rails used in the yards of a steel plant in Pittsburgh for shifting war materials from one part of the plant to another are not impressed with a military character, for they are privately operated for private profit. But if these same rails had been taken up and shipped to the American Army in France and laid by it as a part of its transportation system, used and operated by it for transporting munitions and supplies to the fighting front, they would then have become military materials.

So here the *McCullough*, by the terms of her requisition charter stamped a "public ship," actively engaged in transporting army supplies to the battle front, operated by the War Department of the United States through a crew employed and paid by it and subject in all things to its orders, was at the time of her destruction "military materials" and not property for which Germany is obligated to pay under the provisions of the Treaty of Berlin.

Case No. 547, Steamship *Joseph Cudahy*—Oil Tanker.

The steamship *Joseph Cudahy*, an oil tanker, owned by the American Italian Commercial Corporation, of New York, an American national, was requisitioned by the United States through the Shipping Board on October 3, 1917, and on the same day delivered to the War Department and operated by the United States Army Transport Service under a bare-boat charter by a civilian crew employed and paid by and in all things subject to the orders of the army authorities. She was armed with two 3-inch guns. Her armament was manned by a United States naval crew of 21 men. She had carried a cargo of gasoline and naphtha for the United States Army from Bayonne, New Jersey, calling first at La Pollice, France, and then to Le

⁷ The *Lake Monroe*, (1919) 250 U. S. 246.

Verdon and discharged her cargo at Furt, Gironde River. She sailed from Le Verdon in ballast on her return trip to New York on August 14, 1918; in convoy with 28 other vessels. The convoy broke up during the night of August 15. She was torpedoed by a German submarine and sunk on the morning of August 17.

The fact that she was in ballast at the time of her destruction is immaterial. Being a tank ship operated by and for the exclusive use of the Army Transport Service of the United States, her return in ballast for additional supplies of gasoline and naphtha for the United States Army on the fighting front was an inseparable part of her military operations.

For the reasons set out in connection with the destruction of the *John G. McCullough* the Commission holds that the *Joseph Cudahy* at the time of her destruction was impressed with the character of "military materials" and that the loss suffered by the United States resulting from her destruction is not one for which Germany is obligated to pay under the terms of the Treaty of Berlin.

Case No. 548, Steamship *A. A. Raven*.

The steamship *A. A. Raven*, owned by the American Transportation Company, Inc., an American national, was requisitioned by the United States through the Shipping Board, and a bare-boat requisition charter was executed on February 19, 1918. She was delivered to and operated by the War Department with a civilian crew employed and paid by and in all respects subject to the orders of the War Department. She was armed with two 3-inch guns but had no armed guard at the time of her loss. While en route in convoy on March 14, 1918, from Barry, England, to Brest and thence to Bordeaux, France, she was sunk. The German Admiralty has no record of her having been torpedoed by a German submarine as claimed by the American Agent. As pointed out by the German Agent, she may possibly have struck a mine adrift from fields planted by the Netherlands Government along the Dutch coast not far from the point where the *A. A. Raven* was sunk. The evidence that she was torpedoed, while far from satisfactory, is sufficient to support the allegation. However, in view of the disposition which the Commission will make of this case the cause of her destruction is immaterial.

At the time of her destruction she had a cargo of food, clothing, surgical instruments, hospital supplies, piping, and rails and 400 tons of explosives, all belonging to the United States and all designed for the use of the American Army in France.

For the reasons set forth in connection with the case involving the loss of the *John G. McCullough* the Commission holds that the steamship *A. A. Raven* was at the time of her destruction impressed with a military character and that the resultant loss to the United States is not one for which Germany is obligated to pay under the terms of the Treaty of Berlin.

From the foregoing the Commission deduces the following general rules

with respect to the tests to be applied in determining when hull losses fall within the excepted class of "naval and military works or materials" as that phrase is found in paragraph 9 of Annex I to Section I of Part VIII of the Treaty of Versailles as carried by reference into the Treaty of Berlin:

I. In order to bring a ship within the excepted class she must have been operated by the United States at the time of her destruction for purposes directly in furtherance of a military operation against Germany or her allies.

II. It is immaterial whether the ship was or was not owned by the United States; her possession, either actual or constructive, and her use by the United States in direct furtherance of a military operation against its then enemies constitute the controlling test.

III. So long as a ship is privately operated for private profit she cannot be impressed with a military character, for only the government can lawfully engage in direct warlike activities.

IV. The fact that a ship was either owned or requisitioned by the Shipping Board or the Fleet Corporation and operated by one of them, either directly or through an agent, does not create even a rebuttable presumption that she was impressed with a military character.

V. When, however, a ship, either owned by or requisitioned by the United States during the period of belligerency, passed into the possession and under the operation of either the War Department or the Navy Department of the United States, thereby becoming a public ship, her master, officers, and crew all being employed and paid by and subject to the orders of the United States, it is to be presumed that such possession, control, and operation by a military arm of a government focusing all of its powers and energies on actively waging war, were directly in furtherance of a military operation. Such control and operation of a ship will be treated by the Commission as *prima facie*, but not conclusive, evidence of her military character.

VI. Neither (a) the arming for defensive purposes of a merchantman, nor (b) the manning of such armament by a naval gun crew, nor (c) her routing by the Navy Department of the United States for the purpose of avoiding the enemy, nor (d) the following by the civilian master of such merchantman of instructions given by the Navy Department for the defense of the ship when attacked by or when in danger of attack by the enemy, nor (e) her seeking the protection of a convoy and submitting herself to naval instructions as to route and operation for the purpose of avoiding the enemy, nor all of these combined, will suffice to impress such merchantman with a military character.

VII. The facts in each case will be carefully examined and weighed and the Commission will determine whether or not the particular ship at the time of her destruction was operated by the United States directly in furtherance of a military operation against Germany or her allies. If she was so operated she will fall within the excepted class, otherwise she will not.

The preliminary submissions of the thirteen cases specifically dealt with in this opinion will not be held a waiver of the right of either the American Agent or the German Agent to file in any of them additional proofs bearing on the points decided. Such additional proofs if filed will be considered by the Commission on the final submission, when the principles and rules herein announced will be applied and final decisions rendered. In the absence of further evidence, the interlocutory decisions herein rendered in each of these thirteen cases will become final.

Done at Washington March 25, 1924.

EDWIN B. PARKER,
Umpire.

Concurring in the conclusions:

W. KIESSELBACH,
German Commissioner.

I concur in the conclusions generally, but not in the conclusion that on the facts stated with reference to the *Joseph Cudahy* she was impressed with the character of "military and naval works or materials" within the meaning of that phrase as used in the provisions of the Treaty of Versailles under consideration.

One of the conclusions concurred in is that the control and operation of a vessel by the War Department of the United States for army service, as was the case with the *Joseph Cudahy*, constitutes *prima facie* but not conclusive evidence of her military character.

Another conclusion concurred in is that in order to bring a vessel within the excepted class she must have been operated by the United States at the time of her destruction "for purposes directly in furtherance of a military operation against Germany or her allies."

On the facts stated, the *Joseph Cudahy* was returning home from France to the United States in ballast at the time of her destruction, so that she was not being operated at that time "for purposes directly in furtherance of a military operation against Germany or her allies." Accordingly the presumption arising from her control and operation by the War Department is completely rebutted by her actual use and situation at the time of her destruction.

CHANDLER P. ANDERSON,
American Commissioner.

BOOK REVIEWS*

Ways to Peace. Twenty plans selected from the most representative of those submitted to the American Peace Award for the best practicable plan by which the United States may cooperate with other nations to achieve and preserve the peace of the world, with an Introduction by Esther Everett Lape, member in charge of the Policy Committee, and a Preface by Edward W. Bok, founder of the award. New York: Charles Scribner's Sons, 1924. pp. xviii, 465. \$3.00.

This book contains a preface by Mr. Bok, an introduction by Miss Lape, the winning plan by Dr. Levermore, and nineteen other meritorious plans, essays, or suggestions by competitors for the prize, including such well-known men as ex-President Eliot, Dr. David Starr Jordan and Bishop Brent. To describe the interesting proposals of all these writers is impossible, but attention is called to some of them as examples.

The plan of Professor Manley O. Hudson, one of the competitors, holds a close second place to that of Dr. Levermore, which in some respects it resembles. Both plans, however, make extensive reservations in order to avoid the assumption of obligations and propose in effect for the United States an associate membership in the League, though Professor Hudson uses the term "conditional membership." This is a relationship that we fear is impracticable and acceptance by this country or by other countries unlikely, although at first sight it looks reasonable as a compromise and would appear to overcome some of the American objections.

Like most writers who hold to the League of Nations as the basis for future organization, neither Dr. Levermore nor Professor Hudson pays much attention to the work of The Hague Conferences nor gives us hope of their revival. This we believe to be a mistake, the correction of which must ultimately be made, for The Hague still stands for the historic development of the family of nations under international law.

Professor Borchard, with his eye on history, proposes to eliminate the political and coercive features of the League, for which neither Europe nor the United States appears to be fully ready. He would also change the name "covenant" to "constitution." This amendment may be too advanced for American opinion, but some change of title would doubtless be welcomed. He values the administrative functions of the League and believes that the United States can cooperate with it through technical committees in dealing with such subjects of common interest as the traffic in

*The JOURNAL assumes no responsibility for the views expressed in signed or unsigned book reviews or notes.

opium, women and children, transit and customs regulations. He aims directly at imperialism, at the irresponsible commercial rivalry of the industrial nations that seek raw materials and markets, as one of the chief evils of the present international system, and though he would leave some of the machinery of the League as it is, he proposes to form an economic, instead of a political, association of the nations to adjust by conference at The Hague and by international commissions conflicting trade interests that lead to war. He also favors the codification of international law at The Hague.

Mr. Christian A. Herter, keeping in view American precedents, would have America join the Permanent Court of International Justice if dissociated from the League and, though he would leave the League to Europe, he would base the peace organization of the nations on a universal treaty drawn up after the pattern of the Treaties for the Advancement of Peace, by an arrangement to be established in a conference called by the United States, the Senate of which has ratified twenty-nine of these treaties without reservations. Mr. Samuel Peter Wilson, impatient of the failures of the League to settle some of the recent international troubles and of the delays of courts, institutions that aim at "a brilliant goal but not a practical means," advocates war prevention by organizing scientists and technicians to stand ready to go on strike if called upon to prepare for aggressive warfare, but also to investigate causes of war, and to divert men as well as industries from warlike occupations to peaceful pursuits. This is a solution of the peace problem that keeps pace with the advancement of science and technology which are now controlling the world.

General John McAuley Palmer, writing with compelling logic, proposes universal preparedness on the Swiss model in order that all nations, weak ones like China or even like England and the United States as they were supposed to be in 1914, will be so strong that no military nation like Germany, as she was in 1914, will be tempted to impose on them, or seek *vengeance* rather than justice through force. His idea is important as a military policy for the United States; it applies also no doubt to China and possibly to England, but it would seem to offer a negative and at best only a partial solution of the problem. The plan of General Palmer is based largely upon the psychology of fear, which may or may not be always dependable. He takes perhaps too little account of the mistakes in judgment made by political leaders, who bring on war, and he should counterbalance it by constructive measures, but he also has a place in his scheme for conferences of the nations to secure good understanding.

Theodore Stanfield, turning to the American constitutional conception of a government of laws rather than of men, proposes an international criminal court for war-makers, who, he says, are usually the supreme political leaders, but this kind of system, although applicable to the United States, would seem to imply an international state with an international citizenship amenable

to its laws, together with a family of nations previously educated to respect those laws; and the world is probably not ready for it, although there is a stern demand in Europe and elsewhere for the punishment of brutal offenders against the laws of war, and particularly for the makers of war.

The preface by Mr. Bok is an optimistic but by no means extravagant expression of his hopes; and to him we owe our thanks for a courageous venture into publicity which has awakened a deeper interest than ever before in the popular study of world peace. To Miss Lape, the editor of this interesting collection of papers, we should be grateful for their preparation in attractive book form. Miss Lape in her introduction assesses the value of some of the suggestions contained in more than twenty-two thousand plans submitted, but she deals with them rather summarily and critically. We could wish for more details and hope that other plans, if like these that she has presented in full, will be brought to light in the future.

JAMES L. TRYON.

The Régime of the International Rivers: Danube and Rhine. By J. P. Chamberlain. (Columbia University. Studies in Political Science, Vol. CV, No. 1, Whole no. 237.) New York: Longmans, Green & Co., London: P. S. King & Son, Ltd., 1923. pp. 317.

In this volume we have a clearly written and comprehensive account of a subject which under many forms and in many places has come to assume an increasing international interest. The facilitation of traffic along streams traversing in their course territories of various governments has become one of the most vital public questions of the day, and although quite familiar to American thought, the principles and processes involved are naturally more complex and of greater practical importance in Europe than here by reason of the greater diversity of interests involved.

The author of the present study has wisely selected the Rhine and Danube as typical rivers well illustrating every possible phase of the subject. Rising as they do in a centrally located district, and flowing, the one to the north and west, the other toward the southeast, they form, taken together, a waterway of incomparable value for Europe's commercial fortunes, crossing the territories stretching from the North Sea to the Black Sea and beyond. The material for the present study was collected, the author tells us, chiefly as official work in connection with the peace settlement after the great war. "The main thread of the story of international rivers is," the author well says, "the recognition of the importance to the riparian community of free navigation and the reconciliation of this common interest with the control by each riparian state of its own territory, even its fluvial territory . . . freedom of navigation and commerce on international waterways has become merged in the wider question of freedom of transit on land as well as waterways. Perhaps even airways may be included. Thus it returns to

where Grotius placed it with no distinction between any commercial routes, only laying down the principle that merchants should be free to come and go in carrying on that trade between peoples on which is based the hope for permanent peace."

The author's accounts of the two great rivers in their international aspects are prefaced by sketches of geographical conditions, following which we have historical accounts of river regulation from early periods. Following these we have more or less detailed accounts of the various diplomatic and governmental devices designed to exploit or control river traffic. The author's study includes the terms of the Peace Treaty, but stops there, and does not, therefore, comprise the important international conference on communications and transit held at Barcelona in March, 1921, in pursuance of Article 23 of the Covenant which provides, "Subject to and in accordance with the provisions of international conventions existing or hereafter agreed upon the members of the League . . . (e) will make provision to secure and maintain freedom of communications and transit. . . . In this connection the special necessities of the regions devastated during the War 1914-1918 shall be borne in mind."

An eminently practical movement has thus been formally initiated to carry out the positions and resolutions intended by the Congress of Vienna, a century ago, to mark a lasting commercial reform; it will assuredly mark a fresh point of departure in fluvial navigation.

Our author has given in Appendix I a brief analysis of leading treaties concerning rivers, and in Appendix II we have portions of the Public Act of November 1, 1865, touching the extension of neutrality to the establishments created by the European Danube Commission, together with the regulation fixing the order of the European Commission's procedure. It would appear to the reviewer that copies *in extenso* of some leading treaties might have been annexed, inasmuch as the student is apt to gain more exact knowledge from such texts rather than from any summary, however excellent.

Dr. Chamberlain gives a brief bibliography of the subject, which is useful so far as it goes, but which does not in truth go as far as it might, and discloses not a little careless proof-reading. A similar carelessness is occasionally found in the author's text, as for example, on page 193, note, a reference to Lawrence's edition of Wheaton directs us to "Wheaton Lawrence's International Law," which manifestly leaves something to be desired. The bibliography might advantageously have been strengthened by some additions, as, for example, we have "Bonfils, Droit International Public (4th ed., Paris, 1905)." This is a quite inadequate reference to that useful work, which, as revised and recast by Fauchille, reached its eighth edition in 1922. The following works are not included, although in each instance mention might have been advantageously made: André de Saint Clair, *Le Danube* (1899); Pierre Orban, *Étude de Droit Fluvial International* (1896); K. Schulthess, *Das Internationale Wasserrecht* (Zurich, 1916); Paul Morgan Ogilvie,

International Waterways (New York, 1920). The question of international rivers has naturally produced many valuable articles in the periodical press, noteworthy among such being an article by Louis Avennier in the *Bibliothèque Universelle et Revue Suisse* for March and April, 1922: "Le droit fluvial international et le régime du Danube"; and one by George Saunders, "The Free Navigation of the Rhine," in *The Nineteenth Century* for June, 1919. Professor Schmidt, of St. Gall, Switzerland, has published a short but instructive lecture (1921) on "Der Freie Rhein und der Wiederaufbau Europas."

The brilliant labors of the conference held at Barcelona in 1921 under the auspices of the League of Nations are preserved in a well printed if somewhat formidable volume (Geneva, 1921): *Comptes Rendus et Textes relatifs à la Convention sur la Régime des Voies Navigables d'Intérêt international et à la Déclaration portant Reconnaissance du Droit au Pavillon d'États Dépourvus de Littoral Maritime.*"

In closing his review of conditions specially applicable to the Danube under the peace treaties, Dr. Chamberlain well observes that, "From the point of view of the development of the international law of rivers and of international organization, local and European, the Danube will hold the first place among rivers in the interest of students of law and politics."

About the Rhine, nevertheless, there gathers, in addition to its immense commercial interest, elements of sentiment and romance not to be denied. At the present time, too, navigation upon this stream has come to be increasingly subject to Swiss demands which are striving for a navigation alike free from physical as well as legal and international obstructions from the Lake of Constance to the sea. In a work such as that under review, a more extended account of Swiss efforts than is given by the author at page 277 *et seq.*, would, therefore, seem desirable. The Swiss National Government has published accounts of the various regulations touching navigation on Lake Constance and those portions of the Rhine below the lake which serve Swiss territory: *Internationale Schifffahrts-und Hafenordnung für den Bodensee* (Bern, 1910); *Gemeinsame Schifffahrts-und Hafenordnung* (Bern, 1915).

At pages 281-282 in his concluding sentences Professor Chamberlain expresses views touching river internationalization which, in the reviewer's judgment, would narrow those conceptions of international navigation which will surely, in spite of many failures, come before long into their own: "Whether the opening of a river to vessels of all nationalities," says he, "is apt to have any substantial effect, may well be doubted and whether, if it has, the result would be advantageous, is very questionable. Whether freedom of river navigation to all flags is advisable depends on whether the practical value outweighs the consequent interference with the individual rights of the riparian states to regulate their interior navigation.

"The problem of freedom of navigation to all flags of international rivers may be divided into two clearly marked parts, freedom for seagoing ships to

sail up to the river ports where they transfer to and from river boats, and strictly fluvial navigation. So far as the first is concerned, the river should, for this purpose, be treated as an arm of the sea; for the second, the fluvial community should have full power of disposition. The distinction between river and the open sea should be kept in view." Precisely what such a distinction may imply may yet remain to be determined; but a genuine freedom, notwithstanding, is the avowed aim of internationalization, and should necessarily strive to achieve conditions unreservedly free and thus assist the progress of international intercourse and the promotion of international harmony, prosperity, and peace.

Professor Chamberlain's book would gain much, in a subsequent edition, by an index which it now lacks. The work is well conceived and carried out; the style is clear and the author's apprehension of his subject is most excellent. The book can be cheerfully commended to all interested in a subject whose practical importance is increasing and the solution of whose attendant problems must go far toward promoting that international solidarity for which all hope though the issue may be as yet far away.

GORDON E. SHERMAN.

The Foreign Policies of Soviet Russia. By Alfred L. P. Dennis. New York: E. P. Dutton & Co., 1924. pp. xv, 500. \$5.00.

It is kittle business to write about Russia anyway nowadays; still more fearsome to attempt anything definite about the foreign policy of the Russian Government, or "control," as one authority on that country puts it. Professor Dennis has succeeded in being definite and precise without being hard to read; in being thorough without being prolix. Though at times he refuses to mince words or to take refuge in obscurities or meticulous phrasing, he never seems to lose his poise or his true position as an impartial though not colorless narrator of the facts.

Without exaggeration, one may pronounce this work to be thorough, comprehensive, and accurate, as well as clear and readable. Every phase that one can think of in the development of the foreign policies of Soviet Russia whether it concerns countries or movements, is adequately treated, especially when one considers the proportions necessarily to be observed in a book of moderate size. Every country having intercourse with Soviet Russia has a place, while such topics as the Third Internationale, the Policy of Trade Agreements, and the New Economic Policy, are presented fully and understandingly, including the propaganda element, so little understood, but so much talked about. Save for a few typographical errors, the accuracy of the statements seems well established and supported by copious notes. In more than one instance (particularly in the case of the Brest-Litovsk Treaty), the correct version has been carefully chosen rather than the incorrect, no matter how widely circulated the latter has been. We have had

plenty of "readable books" upon Russia, though some that were readable lacked in clearness, and almost always were lacking in the other qualities.

The treatment is chronological at the start, developing into regional and topical as the story unfolds, and geographical and economic factors enter. Beginning with the first responsible demonstrations of the revolutionists, and their various policies (Professor Dennis insists upon the plural for cogent reasons), their course is followed through the November revolution, the Treaty of Brest-Litovsk, and the Peace Conference, after which the relations of Soviet Russia with the Baltic region, Poland, Rumania, Bessarabia, Federated Russia, the Caucasus, and The Near East, Persia, Afghanistan, and The Far East, follow in turn. The chapters on special phases follow, while the Soviet relations with the United States are reserved to form the climax.

The readers of the *AMERICAN JOURNAL OF INTERNATIONAL LAW* will be especially attracted by certain Bolshevik ideas that are assuredly different from those held as acceptable under the law of nations. They will be apt to put the Bolshevik and the Hohenzollern in the same class when it comes to the sanctity of treaties. They will find it curious, to say the least, and at the same time they will find it very hard to understand, the idea of Lenin that lost territory, to a nation, means nothing, yet this idea that Internationalism triumphs over such losses is quite clearly brought out, particularly in the chapter on Brest-Litovsk. It is quite clear, too, why the Bolshevik Government must look to a world revolution as its only hope, as the only way by which it can maintain its existence in Russia. Any doubts upon this subject must be thoroughly dissipated after the simple, yet masterly, study that Professor Dennis has given of it. We can understand the propaganda; we can understand the fulminations of Trotsky, Zinoviev, etc.; and above all, we can see the significance of omitting the word Russia from the name now given by the Bolshevik Government to the Bolshevik State. It is quite possible, too, to understand why the recognition of Soviet Russia by the European states has been so futile, and why the policy of the United States in this direction is the most practical, as well as the most logical.

Here we must pause to answer the obvious question: Is Professor Dennis impartial? It would seem to the reviewer that, for all practical purposes, this question can be answered in the affirmative. None of us can be merely recording machines when it comes to such a vital and dynamic movement as Bolshevism, whether internally or externally expressed. There is something more needed than the mere collecting of facts. That collecting, however, Professor Dennis has done fairly and comprehensively. Granted that, on the whole, the author has covered the material as fairly and as thoroughly as can be, the next question comes as to the validity of his interpretations. Of this, every reader can be a judge, but the reviewer is inclined to emphasize that these interpretations seem, in general, much more in accordance with

the known facts than many that have been made by less responsible persons than Professor Dennis.

In some cases, the real reasons for the intervention of the Allies is given, frequently for almost the first time. We learn more about the potent reasons back of the Murmansk expeditions, as well as the attempts of the Bolsheviks to seize the stores at Archangel and Vladivostok, stores paid for by the Allies (including the United States) and, also, about their attempted seizure at the very time that the Bolshevik Government had repudiated its debts. Much of such evidence is worth considering now in view of the "counter-claims" just put forward by the Bolshevik Government against the United States.

While deprecating any assertion of an intimate knowledge of Russian internal affairs, Professor Dennis adds considerable to our understanding of such as are vital to our comprehension of the Soviet policies. The story of the Constituent Assembly is briefly, but pungently, told. A statement that may surprise is that "many of the characteristics of the Bolsheviks which seem most incomprehensible and offensive to Western nations are, in the last analysis, Russian characteristics" (p. 347). Lucid, indeed, is the author's treatment of the German "bribery" of the Bolsheviks, putting on its true basis those transactions between the two parties bent upon one end, at least, in common. The Bolsheviks would have used the Devil himself "in good cause."

One is usually inclined on general principles to criticize a volume filled with quotations in the text. In this work one is ready to admit the aptness and telling force of the quotations that are not "interlarded," but are distributed where they are clearly appropriate. They serve to reveal the unblushing duplicity (as we would call it) of the Bolshevik leaders, as well as the hollowness of their control over Russia.

Some readers may not think the policy followed in arranging references at the end of each chapter, rather than as footnotes, is as pleasing, but it certainly does mass such material where it can be fully measured and evaluated. The mixture of books, dispatches, newspapers, and proclamations, to say nothing of magazine articles, surely is impressive for its variety, and reveals a wide range of research. It is evident that few men could put together such a bibliography.

The impressive maps at each end of the volume (inside the covers), together with the graph at the bottom of one of them, are striking reminders of the subject's importance, by showing the size of Soviet Russia in comparison with the eastern hemisphere and with the United States. Six maps, well chosen as to their subject, are scattered through the volume, all reasonably clear; certainly the last of this series, "European Districts and Propaganda Routes of the Third Internationale" would be voted most interesting. There is a usable index.

ARTHUR I. ANDREWS.

Privateering and Piracy in the Colonial Period. By John Franklin Jameson. New York: The Macmillan Co., 1923. pp. xxvi, 586 and index. \$5.00.

Do you remember your boyhood tales of Captain Kidd, "the most famous pirate in American history"? Well, here is a book to keep that memory fresh. Indeed it is the documentary evidence of the hero's exploits and those of his roistering contemporaries and followers, such as, to mention a few seasoned pirates, Bartholomew Sharp, Henry Morgan, Henry Every, Samuel Bellamy, Bartholomew Roberts, during the period from 1638 to 1763, the end of the last colonial war. And the proof, contrary to the usual case, makes as interesting reading for the grown-up as the tale did for the boy. But the delightful notes to the documents are the most interesting of all, for they explain and embellish the quaint texts written two or three centuries ago. They bring broadsides of learning to bear on the times and seasons of the wicked buccaneers and privateers of long ago. In fact, the notes are the magic mirror of Vulcan by the aid of which the reader sees the documents in their historical setting and reads them with an understanding mind.

The learned editor has considered privateering and piracy together, not only because one is authorized warfare and the other is unauthorized violence, but also because it was in practice easy for the privateer to slip over into piracy (as did Captain Kidd), especially if privateering proved to be an unprofitable occupation and the end of the voyage was near. After such backsliding, very few lived long enough to reform—they "mostly died young and left few descendants"—notwithstanding the fact that the wages of the sin was not death in some of the colonies, but publicity and imprisonment. In some of the colonial wars, as later in those of 1776 and 1812, privateering assumed such proportions as to be, for brief periods, one of the leading American industries. This fact, taken in conjunction with the present leading industry of the United States, indicates the natural sporting instinct of the American people. "In the period to which most of our documents belong there was always an outburst of piracy after the conclusion of a war, because multitudes of privateers found their occupation gone when peace was proclaimed, and some of them were sure to turn to the allied trade of piracy."

The book contains the essential documents of a privateering voyage, examples of commissions conferring jurisdiction on vice admiralty courts in the colonies to take cognizance of prize causes, the necessary documents in the trial of a prize case, reports of trials, including proceedings, documents, testimony, judgments of the court, and so forth.

Piracy, on the other hand, required less formalities. In the early days there were trials of piracy by courts, but the regular method, which came to prevail, was trial by special commissions appointed by the colonial governor. There are indictments for the crime, partial records of trials and documents relating to executions. The editor continues in the Preface:

But if American colonial piracy presents a smaller array of legal documents than American colonial privateering, it makes up for it by its rich abundance of picturesque narrative and detail. The pieces here brought together show us piracy off Lisbon and in the East Indies and at Madagascar, at Portobello and Panama and in the South Sea, in the West Indies, and all along the Atlantic coast from Newfoundland to the coast of Guiana. They exhibit to us every relation from that of the most innocent victim to that of the most hardened pirate chief. They make it clear how narrow was sometimes the line that divided piracy and privateering, and how difficult it must have been to learn the truth from witnesses so conflicting and of such dubious characters, testifying concerning actions of lawless men in remote seas or on lonely shores.

The book is pregnant with curious things (to mention a few): We observe interesting documents showing a "connection of American colonial history with the very first (and characteristically illegal and unscrupulous) exploits of the Bradenburg-Prussian navy"; we learn that St. Thomas, one of our recently acquired Virgin Islands, was a refuge of buccaneers; we read of Cotton Mather preaching sermons to convicted pirates who had formerly compelled their poor captives to curse the reverend doctor; the execution of John Quelch and his fellow pirates caused an "extra" edition of the *Boston News-Letter* on June 30, 1704; there is an agreement to commit piracy sworn upon the "holy Evangelists," although it would seem more appropriate, as was done in one case, to swear "upon a hatchet for want of a Bible"; we find that "John Barleycorn" was an alias of "Sir Richard" who, according to the Journal of the privateer Sloop *Revenge* (commanded by Captain Benjamin Norton, great-grandfather of the late Professor Charles Eliot Norton of Harvard), "Gott fowl of some of our hands which made them quarrelsome but Sleep overcame the Knight so all was Quiet." And it is recorded that corkscrews were regarded as important articles of plunder.

Coming now to matters of more interest to sedate international lawyers, we find in Dr. Jameson's notes clues to the reports and records of the Vice Admiralty courts of the colonies in America, although Sir Henry Pervice, Judge of the High Court of Admiralty in England from 1715 to 1751 (which then no longer heard appeals from those courts in America), "feared they are not well versed in the Law of Nations, and Treaties between Us and other States; and it is well known that they do not proceed in that Regular Manner as is practiced in His Majesties High Court of Admiralty" (p. 313). It would appear, however, that Sir Henry desired his court to hear all of the prize causes in America.

The book contains a few decisions of the Vice Admiralty courts which relate chiefly to the right to salvage on recapture. One decision appears to involve a question of trading with the enemy (p. 375). In one case, slaves on board were condemned with the ship and cargo (p. 450). One brief decision on piracy by the Lord Commissioners of Appeals is also printed (p. 567). Many of the documents printed are of great interest to the student of early prize court procedure and practice.

L. H. WOOLSEY.

Outbreak of the World War: German Documents collected by Karl Kautsky and edited by Max Montgelas and Walther Schücking. Translated by the Carnegie Endowment for International Peace, Division of International Law. New York: Oxford University Press, American Branch, 1924. pp. vi, 688. Price, \$4.00.

The so-called Kautsky documents, or, as they are officially named, *The German Documents relating to the Outbreak of the War*, collected by Karl Kautsky and published at the request of the German Foreign Office by Count Max Montgelas and Professor Walther Schücking at Charlottenburg late in 1919, have been the subject of considerable comment in this country, especially during the first few months after their publication in Germany. Up to the present time, however, there had appeared in English only a selection of some of the most important of these papers, published in May, 1920, as No. 150 of *International Conciliation* by the American Association for International Conciliation, and the extracts quoted in the volume by Kautsky entitled *The Guilt of William Hohenzollern*, published in London by Skeffington & Son in 1920. Special importance, therefore, attaches to the announcement of the Director of the Division of International Law of the Carnegie Endowment for International Peace in the *Year Book* for 1921 of that institution to the effect that the Endowment is planning to publish an English translation of these documents, as well as other German war documents, *in extenso*. The translation of the Kautsky documents now lies before us.

It will interest Americans to see in these documents, which are all official letters, despatches and reports passing mostly between German diplomats and high government officials during the critical days that preceded the war, and which form the most complete available set of records pertaining to the outbreak of the war, the unmasking of imperial German diplomacy, as it was practised in the early summer of 1914, with all its conniving underhand methods, its wire-pulling and its insincerity. We find in these pages an abundant record of attempts to "manipulate" in Rumania, Turkey, Italy, Bulgaria and elsewhere with a view to winning the governments of these countries over, at a time when, as the German Government later alleged, it had no thought of war and knew not even of any particulars of an Austrian ultimatum to Serbia. We find here Herr von Jagow, the German Foreign Secretary, wiring to the German ambassador at Rome on July 15, 1914—more than a week prior to the presentation of the Austrian ultimatum at Belgrade—the question whether the embassy at Rome requires funds for influencing the Italian press and how much (Document No. 47), and we read the ambassador's reply (No. 54) that he is "already in touch with the press within the limits possible to the embassy," but that he reserves the right to ask for more funds later, which would at the time be of little use since his agents and spies are out of town.

In a message from the German ambassador Tschirschky at Vienna to the

German Chancellor, of June 30 (No. 7), reporting an interview with the Austrian Foreign Secretary Berchtold, wherein the German ambassador wisely states that he is counselling moderation in Vienna, we find marginal comments by the Kaiser himself severely reprimanding the ambassador for his moderation with the words: "Let Tschirschky be good enough to drop this nonsense;" and a sentence in the despatch to the effect that the Austrians are eager now for a final and complete reckoning with Serbia is underlined by the German Emperor, with the marginal comment "Now or never."

The report of Tschirschky of July 10 (No. 29) to the effect that Count Berchtold wants to make the demands upon Serbia such that it would be "wholly impossible for the Serbs to accept" is commented upon favorably by the Emperor, and in the margin we read in his own hand the words of Frederick the Great: "I am against all councils of war and conferences, since the more timid party always has the upper hand."

A despatch of July 11 (No. 31) reveals Jagow giving Vienna the German views as to how to handle the ultimatum, his advice being to publish first, *urbi et orbi*, a general condemnation of Serbia. This advice is acknowledged two days later, with Berchtold's agreement (No. 40). In No. 48 of July 15 we find Jagow informing the German ambassador to England that "we are concerned at present" with "giving the Greater Serbia menace its death blow;" and No. 49 of July 14, a report from Vienna that Count Tisza, the Hungarian Premier, has at last been won over to the view that war against Serbia is necessary, is greeted with enthusiasm by the Emperor, who underlined the passage on the absolute necessity of war and applauded Tisza as being a "real man."

No. 53, a report from the German ambassador to Russia of July 13 to the effect that Russian official circles are full of contempt for Austria, is annotated by the Kaiser with the words: "Pride will have a fall."

No. 65, a despatch sent on July 17 by the German councillor of legation in Austria stating that Count Berchtold is planning to make the note unacceptable to Serbia with a view to provoking a war, furnishes additional evidence, if such evidence were required, to prove that in spite of its professions of ignorance, the German Government knew exactly what to expect from the Austrian ultimatum, that it had been repeatedly informed of the nature of the note at a time when the possibility of exercising a wise restraint upon Austria still existed, that the Emperor, knowing what must be the consequences of Austria's action, did not counsel moderation but on the contrary applauded the threatening, militaristic, dangerous policy of his ally and connived with that ally in carrying out this policy.

In view of all these authentic facts, it is incomprehensible how any responsible person today can still advance the thesis that the German Government wanted no war in 1914. Surely the Kaiser cannot with impunity still protest his lamblike innocence as he did in his letter to

Hindenburg, of April 5, 1921 (printed in the *New York Times*, December 19, 1921, p. 6), and in his book.

Finally, it is interesting to quote a comment made by the Emperor which perhaps throws as much light upon his character as any of his utterances. It is his marginal note on the text of the Serbian reply to the Austrian ultimatum (No. 271): "A brilliant piece of work for a period of only 48 hours. That is more than could be expected. A great moral victory for Vienna; but with it every cause for war is eliminated and Giesl (the Austrian minister) should have stayed right on at Belgrade. On the strength of that I should never have ordered mobilization!" Could anything be more naïve, more vacillating, more impulsive than this sudden *volte face*? If these words represent the man's sincere conviction, they brand him—in the light of what preceded and followed—as an utterly incompetent, inconsequential ruler.

EDWIN H. ZEYDEL.

Towards International Justice. By F. N. Keen. New York: Harcourt, Brace & Co., 1924. pp. 249.

The author of this book is a barrister-at-law of the Middle Temple and the Parliamentary Bar, and was a member of "Lord Bryce's Group" of internationally-minded jurists who began in 1915 to work upon some plan of international government which would prevent future war. Another of the group was Professor Gilbert Murray, of Oxford, who writes a six-page introduction to the book, and explains that diplomatic questions, since the end of the World War, have subordinated constitutional questions associated with the League of Nations.

Professor Murray expresses the opinion that it is "among the few pieces of good luck which the League of Nations has enjoyed that there has so far been no international force. It would have been recruited from those nations which now maintain large armies; it would have had a French Commander-in-Chief, and heaven knows where it would have been or what it would have been doing by this time. Until the League has earned public confidence by its justice it would be madness for it to try to impose its will by military force." Professor Murray also believes that "the most really novel and remarkable body which the Covenant has called into being is the Permanent International Secretariat at Geneva"; that "the crushing disasters of Central Europe, the enforced disarmaments of the ex-enemy nations and the willing disarmament of many others have left France alone bustling with arms and flushed with hard-earned triumph, able to assert her sovereign will over Europe without troubling the rest of the League for their assistance or without regarding their disapproval"; that "the result is that the League, which was meant among other things to be the guarantee of France's permanent safety against future German

attack, has nothing to offer her half so brilliant as the rôle she now enjoys"; that "Article 10, which was once considered to be the very centre of the Covenant, has now been found to be vague, dangerous, and perhaps superfluous, while Article 18, which annuls all international treaties or engagements not published and registered with the League, turns out to be the very touch-stone of the League spirit"; and that "the authority of the League rests not upon the organisation of force but on the sanction of publicity and the appeal to world-opinion" (pp. 8-13).

Mr. Keen starts from the thesis that "the international arrangements made so far are mainly calculated to deal with disputes which would have a good chance in any case of being settled without recourse to war." He accordingly criticizes the pacifists of the era of the Hague Conferences for thinking that a "small step of progress will avail where the real need is for a big jump to carry mankind across a deep abyss" (p. 25). His own "big jump" was big indeed, in his first chapter, which was written in February, 1915. But as the spell of the World War was cast upon him, and as the League of Nations loomed up on the horizon, his jump was slowed down very perceptibly. For example, in his last chapter, which was written in February, 1923, he thunders in the index and murmurs in the text, defining the first duties of nations as follows: "No state shall make aggressive war upon another state or use or threaten to use armed force against another state except in self-defense or in performance of a common duty of all states to coöperate for the purpose of restraining any breach of the peace of the world, or for the purpose of ensuring compliance with international laws, conventions or obligations" (p. 228).

The League of Nations, however far short it has fallen below Mr. Keen's original ideal, he warmly praises, although he is still capable of pointing out its present defects—which he prefers to regard as precursors to future amendments. For example, he notes that "the framers of the Covenant have shrunk from providing for the entire exclusion of war and for the acceptance of peaceful means for the decision of all disputes" (p. 229); that the functions entrusted to the Council of the League are too varied since it must act "in part as an executive committee, in part as a body for conciliating and mediating between disputants, in part as a tribunal for hearing complainants and respondents and giving decisions or recommendations of their differences, and in part as a quasi-legislative body" (p. 242); that "a single dissentient state, provided it is fortunate enough to be represented on the Council, can check all action on the part of the Council and that the Assembly also is impotent to take action in the face of the dissent of a single member" (p. 125); that the members of the Council should be chosen from among the representatives of their respective states in the Assembly (p. 126); that the Covenant lacks adequate provision for the discharge of legislative functions and also for popular control (pp. 127, 128); that "the Covenant does not lay down any principle with regard to the

acceptance by the members of an obligation to maintain or contribute to the maintenance of the necessary forces for preserving peace and discharging police duties in connection with the League, nor does it make any provision for enabling the League itself directly to control, supervise, or check the carrying out by members of their obligations with respect to armaments" (p. 131); and that the mandatory system should be applicable in cases other than those specified in Article 22 (p. 135).

The above criticisms of the League of Nations are sufficiently indicative of the improved international organization which Mr. Keen would advocate for the future; but since these are at present of purely academic interest, they need not be enlarged upon here. As to "the most hopeful method of seeking to attract the United States into the League of Nations," he expresses the conviction that it is to be found in "the acceptance by the League of the twin principles of the complete abolition of war and the compulsory settlement of disputes" (p. 222). Aside from the question as to whether this conviction is justified by the facts or not, it is of interest as being a possible indication of the trend of European opinion regarding this important problem in the right direction.

WM. I. HULL.

The Ethics of Opium. By Ellen N. LaMotte. New York and London: The Century Co. 1924. pp. 204. \$1.75.

The writer of this book approaches her subject with high moral indignation, much of which is levelled at the British government of India. The Netherlands, Portugal, and France also come in for criticism, though of the latter she says:

The French are not hypocrites. They make no defense of opium as being good for people. On the contrary, in speaking of the opium situation they always speak of it as a "struggle"—a struggle against great odds, against an old, well-established custom, against great difficulties with smugglers, but, above all, as a struggle against a harmful and dangerous habit (p. 121).

America is at present given a clean bill of health, but with some recognition of past sins. The basic difficulty in solving the drug problem lies, according to the author, in the "psychology of those nations which find opium harmless for certain peoples"—who recognize it as bad for their white citizens but good for trade and not harmful to orientals. The author rightly recognizes that so long as opium is consumed in large quantities in the East, morphine and its derivatives will find their way into Europe and America.

These bad nations are mostly European, but Japan, since becoming a great power, has adopted European morals, and though suppressing drug-using among her own people, sells opium for profit to the Chinese in her colony of Formosa. Siam and Persia have been controlled by European

diplomacy. Turkey in recent years has shown good-will toward the anti-opium crusade and has become a party to the 1912 Opium Convention through the Lausanne Treaty, but is still met by the temptation to supplement her revenue through stimulating opium production. China, after her brave effort to throw off the evil from 1907 to 1917, has almost given up in discouragement.

The body of the book describes the situation with regard to opium production, consumption, revenues and regulation in the eastern countries. Official reports and statistics from League of Nations' publications are used, but the arrangement of this material is not very clear. The final chapter discusses the effort at international regulation through the Hague Convention of 1912 and the League of Nations, with thorough appreciation of the loop-holes in the former and the difficulties of the latter in this problem.

The author understands that successful strategy against the drug evil demands international coöperation (p. 14), but is distressed to find that the League of Nations is no better than the nations which compose it (p. 179). As one might presume from the title of the book, the author does not hesitate to distribute moral praise and blame among nations for their attitudes on this question. It may be questioned whether this method makes for progress toward its solution. Individuals are alike all over the world in their love of profit and their inconsiderateness of morals in its pursuit. Governments are alike all over in their love of easy sources of revenue. It happens that suppression of opium production will inevitably cost some nations more than others. It is pharasaical to accredit those which stand to gain much and lose little with superior morality because of their greater alacrity in the cause. A thorough understanding of this situation would seem to be necessary if coöperation for the abatement of the evil is to continue.

QUINCY WRIGHT.

The Truth about Mesopotamia, Palestine, and Syria. By J. de V. Loder. London: George Allen and Unwin, Ltd., 1923. pp. 221. 7 sh. 6d.

Truth, whether clothed or naked, is often most elusive. It is particularly hard to lay hands upon in the Middle East. The rivalries of the Great Powers, the nationalistic aims of the Arabs, Jews, and Syrians, have made it excessively difficult to interpret correctly the complicated forces and events of the past ten years in that part of the world.

This small volume of about two hundred pages contains the essential facts and a reasonable explanation of the tangled situation in the Middle East. The author has a thorough knowledge of the field and an obvious desire to be fair. The fact that he was with the Egyptian Expeditionary Force during the World War and later served in the British Foreign Office naturally imposes a guarded form of statement that avoids the appearance

of disloyal criticism. He succeeds, however, in aiding the discriminating reader to evaluate properly British policy in the Near East. His conclusions are manifestly affected by his affiliation with the League of Nations, though he manages to preserve a fairly objective point of view. One has the impression of a genuine internationalist trying sincerely to avoid a prejudiced nationalistic attitude in the examination of the extraordinary problems of Mesopotamia, Palestine, and Syria.

This volume is devoted for the most part to the explanation of the following questions: (1) why Great Britain did not carry out its pledges to the Arabs; (2) why the Arab problem led to serious misunderstandings between France and Great Britain; (3) why these two nations did not fulfill their promise of November 7, 1918, namely, "the complete and final enfranchisement of the peoples so long oppressed by the Turks, and the establishment of national governments and administrations, drawing their authority from the initiative and free choice of the native populations"; (4) why Palestine was not internationalized, and what was the purpose of the Balfour declaration of November, 1917, favoring "the establishment in Palestine of a national home for the Jewish People."

Mr. Loder makes it perfectly plain that the key to the correct answer to these questions lies in the ancient rivalry of France and Great Britain without great concern for the nationalistic claims of the Arabs, Jews, and Syrians. The geographical significance of Mesopotamia, together with its natural resources, explains the interest of Great Britain in that region, while the situation of Syria likewise explains the special concern of France to protect its interests as opposed to those of Great Britain. Palestine, promised as a "National Home" to the Jews, though of great international significance, is viewed by Great Britain as a "bastion" of the Suez Canal.

The author's comments on all these controlling influences and factors in the Middle East, though couched generally in the adroit phraseology affected in parliamentary answers to interpellations, are often most illuminating. The chapter on Mandates, Treaties and Conclusions is really a statesmanlike analysis of the larger problems involved. Speaking of the pretensions of the Arabs, the author says:

Thus national governments in the sense in which the term applies in Europe are sheer impossibilities in the Arab countries at present. Nevertheless, there must be a framework or "façade" within or behind which national consciousness, at present in its infancy almost everywhere, and in some places practically non-existent, may build a lasting national structure or structures (p. 151).

This "façade" Mr. Loder finds in the mandate system under the League of Nations.

The expansion of Western Powers has hitherto been closely identified with territorial aggrandizement as a means of attaining political supremacy. Foreign assistance has come to be interpreted as synony-

mous with foreign domination, and the development of the resources of a country thus assisted has become indistinguishably connected with the idea of economic exploitation. . . . It is only fair, however, to say that governments, and, to an even greater extent, peoples, do not lack disinterested aims, which they would like to see realized if they could only get away from the disastrous effects of a competitive system based on narrow divisions of interest. The League of Nations and the Mandate system which springs from it are an expression of the feeling of world solidarity, which the war, paradoxical though it may seem, has done so much to develop (p. 152).

The most interesting feature of this volume I find in its treatment of the thorny problem of Zionism, where the author discloses the antagonistic point of view of most British officials who have had any experience in Palestine. His explanation of the Balfour declaration deserves to be quoted:

Apart from the question of abstract justice and its bearing on a solution of the Jewish problem as a whole, which we shall discuss later, Zionism offered certain definite advantages to Great Britain. There was the chance of an alliance with the international force of Jewry which the circumstances of the war made specially attractive and which might survive as of permanent value, and there was the chance of introducing a Jewish element into Palestine, bound by ties of gratitude to Great Britain, which would turn Palestine into an advanced bastion for the defense of the Suez Canal. The Balfour Declaration must have been influenced by such considerations, though they were certainly not its ultimate motive. The abandonment of the proposal to internationalize Palestine and its transfer to British control marked the attainment of these objects (p. 149).

Mr. Loder emphasizes the most significant aspect of Zionism which is generally ignored:

They (the Jews) have clung together in adversity and have cherished the characteristics and institutions which distinguish them from those among whom they live. It might perhaps be said that they have done this because of persecution rather than in spite of it, *for emancipation seems to have brought assimilation appreciably nearer. It may be partly for this reason that such strenuous efforts have been made to find a concrete and permanent home for the expression of what is essentially Jewish* (p. 155. Italics not in original).

Zionists have been loath to admit that Zionism has the motive of acting as a deterrent to the tendency of Jews to become assimilated in liberal countries, but Mr. Loder would seem to have ample reason for stressing this underlying purpose. Such explanations are much more reasonable than the loose statement by Lord Robert Cecil in his Foreword to the volume: "A nation without a country of its own is an anomaly, and anomalies bring trouble." To consider the Jews as a *nation* requires an entirely new definition of what constitutes a nation under the law of nations.

This book, as may be surmised, is most suggestive. It is crowded with facts and significant observations. It constitutes a kind of practical

manual of international politics in a special field to illustrate certain guiding principles of diplomacy and to elucidate the attitude of European Powers concerning the basic problems of international society.

PHILIP MARSHALL BROWN.

Le Problème des Minorités devant le Droit International. By Jean Lucien-Brun. Paris: "Edition Spes," 1923. pp. xv, 230. 15 fr.

The need of securing protection for minorities of alien race or religion has long furnished a difficult problem for the European statesman. A heritage of dynastic struggles and of wars of conquest during past centuries, the problem presented itself with particular insistence during the nineteenth century, and it is only since the Peace Conference of 1919 that it can be said that the nations have regarded themselves as collectively responsible for its solution, and have attempted, although with but partial success, to bring it under the domain of international law.

Dr. Lucien-Brun's monograph comes as a welcome addition to the scanty literature bearing upon the subject. Holding that the protection of minorities is a problem of concern to all states, whether or not a specific situation is presented to them within their own borders, the author undertakes to set forth the historical origins and logical basis of the problem, to trace its evolution and to examine the practical worth of the measures being taken today and the prospects of further progress. The volume is therefore not a mere statistical study of existing conditions, but a study of physical facts and of legal and moral principles.

Part I presents the historical background of the problem and discusses the earlier system of capitulations for the protection of Christian minorities in Mohammedan countries, as well as the numerous occasions of "intervention" by the Great Powers during the nineteenth century. The latter study is preceded by a study of the legal principles involved in "intervention." Here the author seeks to establish a theoretical justification for the interference by the community of nations as a body in cases when an individual member of the community, such as Turkey, acts in violation of the "human" and "natural" rights that all men possess irrespective of nationality. The standard by which intervention in a given case is justifiable is that of the public opinion of the leading states, whether as expressed by the "Concert" of the Great Powers before 1914 or by the League of Nations since 1920.

Part II is devoted to the present solution of the problem. Here the author introduces a valuable analysis of the racial, linguistic and religious aspects of the minorities question, followed by a study of the geographical environment by which these various elements of nationality are conditioned. The peace treaties of 1919-20 are next analyzed in detail. A distinction is made between the measures taken to secure the voluntary assimilation of

minorities into the body politic by the naturalization of individuals or by their emigration from the state and, on the other hand, the measures taken to protect minorities as a group by according to them "collective rights." Under the latter head are discussed the various concessions made by the treaties of 1919-20 in respect to the free use of the minority language in private or public relations, the maintenance of separate institutions and schools, the disposal of public funds, and the autonomy of religious organization. This is followed by a discussion of the sanctions laid down for the observance of the treaties, in particular the procedure before the Council of the League of Nations and before the Permanent Court.

In a closing chapter, the author points out that in spite of the texts of the several treaties and domestic laws, numerous instances of unjust treatment of minorities have marked the actual conduct of the several governments during the past four years. On this point, however, the evidence submitted seems to the reviewer inadequate, not taking sufficiently into account the difficulties of a period of transition, although the instances cited appear to be fair statements of fact. In view of recent practice, the author is doubtful of the success of mere treaties and statutes, and he appeals in closing to the higher law of Christian charity as the sole power competent to make the legal solution an effective one.

C. G. FENWICK.

The American Revolution: A Constitutional Interpretation. By Charles Howard McIlwain. New York: The Macmillan Co., 1923. pp. xi, 198.

To this essay was awarded the Pulitzer Prize of \$2,000 "for the best book of the year in United States history," an honor which, strangely, has not often come to the professor of history in our colleges and universities. The book does not need the stamp of this approval: the scholarly fame of its author will insure for it the serious consideration of students of this much-investigated period of our history. Whatever disagreements the findings of this volume may provoke, none will deny that the constitutional problem did exist, or will admit that this problem has heretofore been adequately considered. Recent interpretations of the causes and conditions of the revolutionary period have given us much of its economic, the social, and political phases of the controversy, with conclusions that have been growing less and less pleasing to hereditary-patriotic societies and which offer little comfort to others who would like to believe that at least some right was on the side of the "patriots."

Professor McIlwain's problem is one arising out of the distinction to be made between the realm and the dominions. The author is on indisputable ground certainly as regards the situation down to the Civil War and the establishment of the Commonwealth. When the colonies were founded it seemed to be the accepted view that they were not an extension of the

realm, and therefore did not come under the jurisdiction of Parliament. During this period, while many colonial matters came before that body, no legislation directly affecting the colonies was enacted, and in no instance was it successful, against the opposition of King or Council, in accomplishing anything respecting them. "It was the temporary abolition of the kingship which created the constitutional issue from which the American Revolution resulted" (p. 26). More and more, Parliament began to assume legislative control of the colonies and dominions outside the realm. The Restoration and the Revolution in England brought no real change in the attitude of Parliament, but throughout this struggle between Crown and Parliament the growing influence of the latter over the dominions was being continually challenged.

The core of Professor McIlwain's argument is that the American colonies never accepted the constitutional gain to Parliament resulting from the English Revolution; that this assumed power of Parliament, revolutionary in England in 1688, continued for the dominions to be revolutionary until repudiation in America led, in 1776, to the outbreak. The colonies' pact was with the king and expressed by the charter. Only his authority was acknowledged: he had not the right to substitute Parliament as the party of the first part in the agreement. In the light of this argument, there is justification for American opposition to the tax measures, since "inability of Parliament to legislate in any manner for any colony of course precludes all parliamentary taxation" (p. 194).

Professor McIlwain's reasoning is always clear and expressed without ambiguity. Much of it will be convincing. His most pronounced argument is based upon a study of the constitutional relations between England and Ireland, with the contention of which country he finds a close parallel in the American issue. He points out, for example, that the Declaratory Act of 1766 "is identical in tenor and wording with the Declaratory Act for Ireland in 1719, from which it was directly copied" (p. 50). It is to be hoped that publication of the results of his investigation of the actual influence of Irish leaders upon the views of those who made the American Revolution (referred to on p. 61) will not be long delayed.

LEO F. STOCK.

One Hundred Years of the Monroe Doctrine. By David Y. Thomas. New York: The Macmillan Co., 1923. pp. xii, 580. \$4.00.

This timely book in twenty-two chapters discusses the evolution, essential facts and various bearings of the doctrine which has been such a prominent influence in American foreign policy, emphasizing its connection with events since 1880, and especially since 1900, with special attention to its relation to "economic imperialism." For the period since 1914 it presents an excellent historical survey of foreign policy, through its narrative of the

chief recent international events: Pan-American Conferences, the Paris Conference (and the Senate debate), the Washington Conference (and the Senate debate), the Lausanne Conference, and the International Court of Justice.

Only four chapters (pp. 1-50) treat exclusively the earlier period. The first two present the background (historic and immediate), and the third and fourth are confined to the announcement of 1823 and contemporary opinion to 1826. The fifth chapter, on "Non-colonization in principle and practice" (pp. 51-84), the sixth, on "The struggle for a canal route" (pp. 85-117), and the ninth, on "Non-interference in America by European powers" (pp. 184-202), are chiefly confined to the period before 1880. The seventh, on "Non-interference in European practice" (pp. 118-64), and the eighth, on "Interference in Africa, the Pacific and Asia" (165-83), and also the tenth, on "The relation of European claims" (pp. 203-14), are largely devoted to the period after 1880. Subsequent chapters are confined to the last twenty-five years, and most of them to the last ten years. The doctrine as related to economic imperialism receives special attention. Five chapters (Chapters XI-XV) treat "dollar diplomacy"—in Santo Domingo, Haiti, Central America and Mexico and in the struggle for oil. Two others, on recent European and Latin American views, are closely related to this subject.

The book is equipped with a good general subject index. The footnote references, largely to newspapers and other periodical publications, are less satisfactory and do not adequately represent the useful body of facts presented in the book. Evidently the author's investigations have not been extended to all published materials nor to manuscript materials such as the large mass of unpublished archives in the Department of State at Washington.

The book is readable. Usually the matter is well organized. The author cuts a clear path through the jungle of details, explaining prominent situations by brief historical excursions into the past and keeping chief circumstances and sequences well related. While broader in scope than other books on this subject, it is less interpretative. Though the author usually shows excellent judgment, he exhibits a few injudicial deviations or lapses, especially in referring to the "rape" of Panama and to recent American policy in Haiti and Santo Domingo. In maintaining that the Monroe Doctrine has necessarily implied non-interference in Europe, he appears to have confused the declaration of Monroe with certain earlier statements of Washington and Jefferson.

The author apparently disapproves the American participation in the Algeiras Congress (which, after forcing an agreement between France and Germany, supported the French claim to the right to perform an operation on the weak sultan of Morocco), because "success in averting a destructive war between the powers was achieved at the price of sacrificing a weak

backward nation." The Samoan intervention under the "remarkable treaty ratified by the Senate without any reservations" he characterizes as the most serious entanglement to that time, but elsewhere states that, excepting the French alliance of 1778, "we have never made any alliance of any kind, unless the Four Power Treaty of 1922 be so called." American aid to Liberia in 1921 is mentioned as the "beginning of American intervention in African affairs" and as "a new and unexpected development of the Monroe Doctrine."

Perhaps the most striking of the developments having their origin in Monroe's declaration is that by which the doctrine of non-interference by Europe in the affairs of the new world has become a doctrine of interference by the United States in assuming the responsibilities of preventing smaller states from furnishing an excuse for European interference. The chapters which outline and describe the process of this intervention on the part of the United States—in Haiti, Santo Domingo and Central America and to a less extent in Mexico—are full of facts collected nowhere else in such convenient form.

Referring to the conditions of international anarchy which accompany the theoretically ideal policy of the open door, which practically may be closed by the entering body of one big man, he urges that the day of international regulation must come just as surely as national regulation came in domestic affairs, and that the longer we put it off the nearer we approach another war. The chapter on the Paris Conference and the Senate Debate, in which he gives a lively description of the battle between President Wilson and the Senate, is probably the most interesting and the most carefully written chapter in the book. In it the author explains the wave of idealism which carried Wilson to Paris and the subsequent subsidence which defeated the treaty. Entrance into the World Court is regarded as quite compatible with our traditional policy.

In reviewing the history of the doctrine, Dr. Thomas asserts that the non-colonization feature has been fairly well enforced, though not always, and that even voluntary transfers or cessions have been successfully opposed; that the corollary promise never to interfere with existing European colonies was not seriously broken before the ejection of Spain from Cuba and Porto Rico in 1898; that the pledge of non-participation in European political conferences was consistently kept until 1880, but this policy of abstention from European affairs was put to several severe tests thereafter—the latest being the Paris Peace Conference of 1919, the Washington Conference of 1922, relations in connection with the Turkish problem and the Lausanne Conference in 1920–22 (in which the United States sought to participate in shaping international policies while refusing to assume a corresponding responsibility), and the pressure on the Bolshevik government of Russia; that the allied debts to the United States (a heritage of the World War) have furnished another lever for interference in European affairs; that the

promise to recognize *de facto* governments has not been fully or consistently kept (as seen in the recent refusal to recognize the governments of Huerta and Obregon in Mexico), and that "the policy of recognizing whatever government suited our policy and sometimes interfering to set up such a government may be said to have been started by President Roosevelt when he recognized the revolutionary government of Panama" (!); that the policy against European interference in America has been steady and has even extended to cases of threatened pressure; that the only serious attempt at political interference by Europe in America was the adventure of France in undertaking to establish the empire of Maximilian in Mexico, and that European arbitration of American disputes cannot be properly regarded as interference; that on the matter of collecting claims there has been considerable change of attitude, the earlier policy of indifference giving way to a more vigorous policy beginning with restrictions on Cuba after 1900 and illustrated in the enforcement of arbitration of German claims against Venezuela in 1902 (when Germany sought to put the Monroe Doctrine to the test), and in the later arrangements to administer the customs of Santo Domingo (1905-07), of Nicaragua (1911-16) and of Haiti (1915), partly to prevent European intervention and "partly to satisfy American creditors and adventurers"; that our policy regarding participation in intervention in American affairs by joint action, although usually opposed to such action, has sometimes been inconsistent, the widest departure being Secretary Fish's remarkable proposal of 1875 in the Spanish-Cuban War; that the pledge to leave the Latin-American countries to themselves has recently been severely strained, especially in San Domingo and Haiti.

Dr. Thomas does not agree with those who, holding that the Monroe Doctrine is the same today that it was in 1823 when proclaimed out of self-interest, assume that we must "either wield the big stick, or else give up the doctrine and let Europeans wield the stick." He does not favor the abandonment of the doctrine, especially not "if the world is to go in the old way, each nation for itself, . . . and letting the devil take the hindmost," but he predicts that when no one nation shall dominate and give law for half of the earth, but when all shall coöperate in counsel for the common good, the "advanced" nations, instead of mutually guaranteeing each to the other their island possessions in the Pacific, ceasing to "advance" at the expense of weaker nations and mutually pledging themselves to restrain anyone who does, the doctrine "will have become what Woodrow Wilson sought to make it, the guiding principle of action for the nations of the earth."

J. M. CALLAHAN.

Nederlandsche Diplomatieke en andere Bescherming in den Vreemde, 1795-1914. By Dr. L. Spanjaard. 's-Gravenhage: Martinus Nyhoff, 1923. pp. xix, 428.

This useful work is designed to afford a review of the law and practice of the Netherlands in the protection of its citizens abroad, by diplomatic and other means. In the course of the work the author, who first published the volume as a doctor's dissertation, has examined the archives of the Ministry of Foreign Affairs of his country for the international claims and cases of protection in which the Netherlands has been a party, and has therefore been enabled to make an inductive study of the Dutch practice. Unfortunately, he was able to obtain the full records of the Foreign Office only up to 1848; after that year he has had to rely upon less authentic and complete sources. Nevertheless, Dr. Spanjaard's work is a valuable contribution to our knowledge of international law and practice, for the Netherlands, one of the first countries to engage in overseas trade and investment, has always had a large share of its economic interests in other countries and therefore furnishes a fruitful source for the study of international claims. It would be desirable if the book were republished in a language more commonly accessible than the Dutch.

The author has divided his book into four main parts. In Part I, dealing with the diplomatic protection of Dutch citizens in general, he discusses (a) protection abroad in international customary law, and its place as a legal institution; (b) protection of citizens in the Dutch Constitution; (c) the legal character of the "right of protection" in international law, including the learning on the subject; and (d) protection in the Dutch treaties. In Part II the author discusses the organs and machinery of protection in the international system, with special emphasis upon the constitutional and governmental system of the Netherlands, including the Ministry of Foreign Affairs, the States General, the diplomatic service, the consular service and other official agencies; here also he deals with the status and character of the protected person or corporation. Part III, entitled "Claims Procedure," deals (a) with the legal relations between the two governments concerned and between the claimant and his own government, including the preliminary conditions, administrative and international, with which the claimant must comply before his claim can receive official attention. This part then discusses (b) "official" protection and the means for carrying it into effect, including the ordinary measures short of war, (c) unofficial (*officieux*) protection or the use of "good offices" and (d) the protest or complaint, the answer or defense, and the customary results of the controversial diplomatic procedure involved. Part IV, which comprises something less than half the book, consists of a chronological summary of the cases of claims and protection, with reference to the original and other sources, in the Dutch archives and literature from 1795 to 1914. As a new and mostly original contribution to our knowl-

edge of the cases, this part will be especially prized by students of international law.

This work indicates that a great boon and service to international law and its practitioners and to the judges of international tribunals may be conferred by the several countries of the world if they will open their archives to competent scholars for an examination and study of the cases of international claims and protection in which those countries have been parties. Dr. Spanjaard, within the limitations imposed upon him by the Minister of Foreign Affairs, has done this work for the Netherlands with ability and understanding. A like task awaits the hands of scholars in other countries.

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PERIODICAL LITERATURE ON INTERNATIONAL LAW SUBJECTS¹

- Aaland Islands.* Une page inédite de l'histoire moderne du problème Baltique. Les îles d'Aland et le mémorandum de Saint-Petersbourg du 23 avril 1908. Baron M. de Taube. *Revue Générale de Droit International Public.* Nov.-Dec. 1923. 2d series. V:5:56.
- Aerial Law.* La Réglementation Internationale de la Guerre Aérienne. James W. Garner. *Revue Générale de Droit International Public.* Sept.-Oct. 1923. 2d series. V:372.
- Alien Enemy Property.* The sale of German owned patents under the Trading with the Enemy Act as amended. *Yale Law Journal.* May 1924. 33:760.
- American-German Mixed Claims Commission.* Opinions of the International Courts. Manley O. Hudson. *American Bar Association Journal.* May 1924. 6:334.
- . The Opinions of the German-American Mixed Claims Commission in the Light of International Law. *Yale Law Journal.* June 1924. 33:850.
- Arbitration.* La clause compromissoire dans les rapports de commerce internationaux. M. Joseph Hamel. *Revue de Droit International Privé.* 1924. 19:15.
- Armenia.* La Société des Nations et les Puissances devant le Problème Arménien. André Mandelstam. *Revue Générale de Droit International Public.* Sept.-Oct. 1923. 2d series. V:414.
- Austria.* Die Durchführung des Friedensvertrages von St. Germain in Oesterreich. Josef L. Kunz. *Zeitschrift für Internationales Recht.* 31:40.
- . The Reconstruction of Austria. Sir Arthur Salter. *Foreign Affairs.* June 15, 1924. 2:630.
- Boundaries.* Les Bases Juridiques de la Question de Javorina. Jean Kremer. *Revue Générale de Droit International Public.* Sept.-Oct. 1923. 2d series. V:402.
- Brazil.* A nossa Tradição Diplomática. Frederico Clark. *Revista de Direito Publico e de Administração Federal, Estadual e Municipal.* VI:561.

¹ Limited to articles published in periodicals exchanged with the AMERICAN JOURNAL OF INTERNATIONAL LAW.

- British Empire.* Notes on Imperial Constitutional Law. Berriedale Keith. *Journal of Comparative Legislation and International Law.* February 1924. 3d series. VI:135.
- Canada.* Diplomacy and International Status. Herbert A. Smith. *Canadian Bar Review.* II:231.
- . Recent constitutional developments in Canada. Newton W. Rowell. *American Bar Association Journal.* June 1924. X:427.
- China.* Le Problème de L'Exterritorialité en Chine. Jean Escarra. *Revue de Droit International Privé.* 1924. 19:31.
- Conflict of Laws.* Collisions in Territorial Waters and the Conflict of Laws. *Yale Law Journal.* June 1924. 33:867.
- . Des conflits de lois; en matière d'exécution testamentaire. Paul Guyot. *Revue de Droit International Privé.* 1924. 19:1.
- . Territoriality, Public Policy and the Conflict of Laws. Ernest G. Lorenzen. *Yale Law Journal.* May 1924. 33:736.
- Danzig.* Das angebliche Protektorat Polens über Danzig. Otto Loening. *Zeitschrift für Völkerrecht.* XII:489.
- Diplomatic Immunity.* Arrest without a warrant. Horace L. Wilgus. *Michigan Law Review.* April 1924. 22:541.
- Egypt.* The Constitution of Egypt. Norman Bentwich. *Journal of Comparative Legislation and International Law.* February 1924. 3d series. 4:41.
- Foreign Trade.* The crude rubber supply: An international problem. Harry N. Whitford. *Foreign Affairs.* June 15, 1924. 2:613.
- . The Economic Restoration of the World. Gustav Stresemann. *Foreign Affairs.* June 15, 1924. 2:552.
- France.* The Program of Liberal France. Edouard Herriot. *Foreign Affairs.* June 15, 1924. 2:558.
- Greek-Turkish Relations.* Le statut des minorités; et L'échange obligatoire; des populations Gréco-Turques. C. G. Ténékidès. *Revue Générale de Droit International Public.* Jan.-Apr. 1924. 2d series. 6:72.
- . Protection des minorités.—Echange obligatoire des populations turques et grecques. *Revue Générale de Droit International Public.* Sept.-Oct. 1923. 2d series. V:514.
- Hungary.* The financial reconstruction of. *Monthly Summary of the League of Nations Supplement.* May 1924.
- International Law.* Codificação do direito internacional Americano. Nuno Pinheiro. *Revista de Direito Público e de Administração Federal, Estadual e Municipal.* Dec. 1923. VI:557.
- . Rechtspolitische Grundlegung der Völkerrechts-wissenschaft. Th. Niemeyer. *Zeitschrift für Internationales Recht.* 31:1.

- . *Völkerrecht und einheitliches Rechtssystem*. Alfred Verdross. *Zeitschrift für Völkerrecht*. 12:405.
- International Penal Law*. Essai d'un système rationnel de distribution des compétences en droit pénal international. H. Donnedieu de Vabres. *Revue de Droit International Privé*. 1924. 19:48.
- League of Nations*. Influence of the League of Nations on the development of international law. Fannie Fern Andrews. *American Political Science Review*. May 1924. 18:358.
- . La revision du Pacte de la Société des Nations. J. Paulus. *Revue Générale de Droit International Public*. Nov.-Dec. 1923. 2d series. V:525.
- . Operation of the League of Nations. Denys P. Myers. *American Political Science Review*. May 1924. 18:351.
- League of Red Cross Societies*. Ligue des Sociétés de la Croix-Rouge.—La première Conférence pan-américaine de la Croix-Rouge tenue à Buenos Aires du 24 novembre au 6 décembre 1923. *Revue Générale de Droit International Public*. Jan.-Apr. 1924. 2d series. VI:146.
- Maritime Law*. Le connaissance direct. Jean Renard. *Revue de Droit Maritime Comparé*. Jan.-Mar. 1924. 5:1.
- . Le connaissance reçu pour embarquement en droit italien. Carlo Alberto Cobianchi. *Revue de Droit Maritime Comparé*. Jan.-Mar. 1924. 5:23.
- Maritime Liens*. Relative Priority of Maritime Liens. John K. Beach. *Yale Law Journal*. June 1924. 33:841.
- Mandates*. Le régime du mandat d'après le Traité de Versailles; son application dans le proche Orient mandats français en Syrie, Anglais en Palestine et Mésopotamie. P. Pic. *Revue Générale de Droit International Public*. Sept.-Oct. 1923. 2d series. V:321.
- Memel*. La Question de. O. V. de L. Milosz. *Revue Générale de Droit International Public*. Nov.-Dec. 1923. 2d series. V:595.
- Monroe Doctrine*. A proposito da Doutrina de Monroe. Felix Pacheco. *Revista de Direito Publico e de Administração Federal, Estadual e Municipal*. Mar. 1924. VII:191.
- . Le Centenaire de la Doctrine de Monroe. *Revue Générale de Droit International Public*. Nov.-Dec. 1923. 2d series. V:571.
- Nationality*. Die Volkszugehörigkeit und die völkerrechtliche Vertretung der nationalen Minderheiten. Rudolf Laun. *Zeitschrift für Internationales Recht*. 31:252.
- . Le Droit des Nationalités; Sa Valeur, Son Application. Emile Giraud. *Revue Générale de Droit International Public*. Jan.-Apr. 1924. 2d series. VI:17.

Occupied Territories. Die Rechtlosigkeit in den neubesetzten Gebieten. Dr. Meurer. *Zeitschrift für Völkerrecht.* XII:439.

———. Der Reichskommissar für die besetzten rheinischen Gebiete. Friedrich Giese. *Zeitschrift für Völkerrecht.* XII:447.

———. The occupation of Michigan. Elbridge Colby. *Michigan Law Review.* April 1924. 22:509.

Permanent Court of International Justice. Opinions of the International Courts. Manley O. Hudson. *American Bar Association Journal.* April 1924. 10:254.

———.versus International Arbitration. F. N. Keen. *Journal of Comparative Legislation and International Law.* February 1924. 3d series. VI:144.

Poland. La Restauration de la Pologne et la Diplomatie Européenne. Joseph Blociszewski. *Revue Générale de Droit International Public.* Jan.-Apr. 1924. 2d series. VI:89.

———. The Codification of Polish Law. Professor Dr. Stanislas Golab. *Journal of Comparative Legislation and International Law.* February 1924. 3d series. VI:95.

Psychology, Disarmament and Peace. William McDougall. *North American Review.* May 1924. 219:577.

Race Problems in the New Africa. Sir Harry H. Johnston. *Foreign Affairs.* June 15, 1924. 2:598.

Reparations. The Dawes Report. Roland W. Boyden. *Foreign Affairs.* June 15, 1924. 2:583.

Reprisals. Les représailles entre états membres de la Société des Nations. N. Politis. *Revue Général de Droit International Public.* Jan.-Apr. 1924. 2d series. VI:5.

Ruhr Occupation. Les sanctions collectives infligées aux populations Rhénanes par les Alliés en 1923. *Revue Générale de Droit International Public.* Jan.-Apr. 1924. 2d series. VI:149.

Rumanian-Russian Relations. The Bessarabian Dispute. H. F. A. *Foreign Affairs.* June 15, 1924. 2:662.

Russia. Isaac A. Hourwich. *American Bar Association Journal.* April 1924. X:285.

———. The Legal System of Soviet Russia. Borris M. Komar. *American Bar Association Journal.* May 1924. X:349; June 1924. X:434.

Serbisch-kroatisch-slowenische Staat ein neuer Staat. Erich Kaufmann. *Zeitschrift für Internationales Recht.* 31:211.

South Africa before the Elections. Cyril Campbell. *Foreign Affairs.* June 15, 1924. 2:622.

Taxation. Imposto sobre a renda dos titulos mobiliarios estrangeiros. Joao Cabral. *Revista de Direito Publico e de Administração Federal, Estadual e Municipal.* Mar. 1924. VII:221.

The Treaty with Great Britain to prevent liquor smuggling. Wayne B. Wheeler. *American Bar Association Journal.* May 1924. 6:337.

Turkey. The Downfall of the Khalifate. Sir Valentine Chirol. *Foreign Affairs.* June 15, 1924. 2:571.

Union interparlementaire de la paix.—Session de Copenhagen (1923). *Revue Générale de Droit International Public.* Sept.—Oct. 1923. 2d series. V:507.

United States. America in World Affairs: A Democratic View. Edward M. House. *Foreign Affairs.* June 15, 1924. 2:540.

———. Foreign Relations of the United States, 1921–1924. Henry Cabot Lodge. *Foreign Affairs.* June 15, 1924. 2:525.

World War. Die rechtliche Wirkung englischer Handelslizenzen. Hermann Isay. *Zeitschrift für Völkerrecht.* XII:460.

———. Three Lessons of the Naval War. Arthur Hungerford Pollen. *Foreign Affairs.* June 15, 1924. 2:644.

HOPE K. THOMPSON.

EXTRATERRITORIALITY IN CHINA¹

BY CHARLES DENBY

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At the Conference on the Limitation of Armaments at Washington in 1921 one of the subjects considered at the request of the Chinese delegation was a proposal that the Western Powers give up their extraterritorial rights in China. This led to the adoption by the conference at its ninth meeting on November 29th of a declaration that the Western nations "are prepared to relinquish extraterritorial rights when satisfied that the state of Chinese laws, the arrangement for their administration and other considerations warrant them in doing so." This was doubtless a great gratification to the Chinese delegates, but the foreigner in China may have experienced less satisfaction at the menace therein involved to a system which tens of thousands of foreign residents in China regard as the *sine qua non* of their welfare.

It was resolved by the Conference to give effect to this declaration by establishing "a commission . . . to inquire into the present practice of extraterritorial jurisdiction in China . . . the laws and judicial systems and the methods of judicial administration in China," that this commission should be constituted within three months after the adjournment of the conference and should submit within one year of its first session its recommendations for legislation.

This promising start was not followed up; no commission was appointed, it being recognized even by the Chinese Government itself that China was not sufficiently advanced in judicial reform to justify so early an investigation. It was then suggested, after a conference with the Chinese Foreign Office, that the proposed commission should be ready to confer on November 1, 1924. This proposal still lacks approval of some of the Powers. There are, therefore, to be no immediate steps towards the abolition of foreign jurisdiction in China. As China, however, continues the revision of her legal code, it is probable that the Powers in the not distant future will be called upon to give their resolution effect.

No opinion can be formed in advance as to how well China eventually may meet the views of the Western Powers. Should the matter be up for decision today there could be only one verdict from an impartial observer of Chinese legislative and judicial conditions, and that would be that it would

¹ The words "*exterritoriality*" and "*extraterritoriality*" have no definitely agreed upon difference of meaning. There has been a tendency to use the former as connoting the privileges of ambassadors and their suites and the latter as connoting jurisdiction under treaty privileges as in China. In this article the form *extraterritoriality* will be used except where the form *exterritoriality* appears in quotations.

be criminal injustice to foreigners in China and an unfriendly service to China herself to place foreigners and their property under Chinese law. The fear expressed by Americans who have a stake there is that the conclusion in this matter may not be determined by an impartial observer. So mixed up with altruism, sentimental philanthropy and unsound commercial views is the American attitude towards China that the interest of those really concerned, the American business men, risk to be sacrificed to homemade considerations of international equity.

It is not surprising that this fear should be entertained. It is natural to think that a free country should rule every person who resides within its confines and should have the right to say that if one does not like its laws he need not go there. Also it is a natural sentiment for Americans to feel that the American Republic ought to be the first to recognize as an equal her sister Republic across the Pacific. These are fine sentiments and they would grace a Fourth of July oration in any town of the Middle West, but they do not commend themselves to those who have reason to be apprehensive of results.

There are few items in our relations with China that are less understood in America and more misrepresented than this question of extraterritorial jurisdiction. China has frequently denounced the system and foreign critics have often expressed their wonder that America, patron of self-determination, could hesitate to withdraw it. An investigation into the history of the doctrine, however, may change the conception that it was imposed on an unwilling China, that it was a new and onerous burden for that country, and that only virtuous feelings could be gratified by its abolition.

Let us consider what extraterritoriality is as a principle of international law; how it came to be applied in China by the United States; how it was received by the Chinese Government of that day and how it has operated in the more than eight decades since the first American envoys put it into their treaty.

In general terms extraterritoriality denominates "certain immunities from the application of the rule that every person is subject for all acts done within the boundaries of a state to its local laws."² In China in particular this system indicates the treaty privilege under which foreign consular jurisdiction has been there established and which operates to remove citizens of the treaty Powers from control of Chinese laws and officials and to place them under the protection of the laws of their respective nations. The main idea involved in extraterritoriality in China is that the defendant's nationality is in all cases to determine the law to be applied to the case and the judge to apply it.³ For example, an American in China can only be prosecuted for a crime or pursued as a defendant in a civil action before an American court. Similarly for all other nationalities. If an American wishes to

² *Encyclopædia Britannica*, article "Extraterritoriality."

³ C. T. Piggott, *Consular Jurisdiction and Residence in the Far East*.

proceed against a Chinese it must be before a Chinese court, or in the case of an Englishman or a Frenchman before an English or French court, etc., etc. The purpose of this is plain. It is to extend to foreigners in China the protection of their own laws. The reason for it was that Chinese laws and their method of enforcement were repugnant to the sense of equity of foreign Powers.

So deep in the minds of those accustomed to orderly government is the conception that the laws of a government should cover all within its territory that, when foreigners first went to China to trade it was accepted that China's laws should be applicable to them. This was particularly marked in the case of the Americans. The radical difference between Chinese and American laws, if understood at the time, might have shown this to be impracticable. The main principle of Chinese law is the doctrine of responsibility. Some one must be made answerable for every unlawful deed; the lower official is responsible to the higher, the higher official is responsible to the Emperor.

A theft is committed in a village; the village is held responsible, jointly and severally, and with the village its *tipao*, the official head. A commits suicide on B's doorstep; B is held responsible. The Yellow River bursts its banks; the Governor of Honan begs the emperor to deprive him of his titles, since he is responsible. A bankrupt absconds; his family are held responsible in body and estate. A shopman strikes a blow and goes into hiding; his employer is held responsible for his appearance. A province is overrun by rebels; its governor is held responsible. A murder is committed in a town; the magistrate of that town is held responsible for the discovery and arrest of the murderer, for getting up the case for the prosecution, for trial and judgment, and for the execution of the guilty man; to fail in any one of these responsibilities may well lead to his being cashiered. The result is that nothing which occurs goes unpunished; if the guilty person cannot be found, convicted and punished, then the responsible person must accept the consequences—father, family, employer, village magistrate, or viceroy.⁴

The effect of this was in practice that for every crime there must be a victim of justice, and it did not much matter whether or not this victim was guilty; any victim would be better than none, and he might be a person who had no responsibility whatever. There were several striking incidents of the carrying into practice of this feature of Chinese law against foreigners. In the year 1821 at Whangpoa near Canton an Italian sailor on the American ship *Emily* was charged with having killed a woman in a boat alongside by accidentally dropping a jar overboard. The Chinese demanded delivery of the accused for trial and, after some proceedings, directed only to conviction, the accused was strangled by order of the tribunal. Similar instances involving British, French, Portuguese and other foreigners occurred from time to time. This might have opened the eyes of the American Government to the advisability of demanding an impartial hearing officially of

⁴ H. B. Morse, *International Relations with the Chinese Empire*, p. 114.

those accused of crime, but the Americans for years consistently held the attitude that while they were in the waters of China they were bound to submit to her laws.

The fact is that in the pre-treaty days of foreign intercourse with China, trade was the only consideration. Foreigners sacrificed all personal considerations to secure permission to trade. The Chinese thus became convinced not only that foreigners would submit to any treatment if their trade were not interrupted, but that foreigners were themselves utterly refractory to reason. Mr. Morse in the work above cited, quotes from a Chinese writer of early times the Chinese maxim in dealing with foreigners, namely: "The barbarians are like beasts and not to be ruled on the same principles as Chinese. Were one to attempt to control them by the great maxims of reason it would tend to nothing but the greatest confusion. The ancient sovereigns well understood this and accordingly ruled barbarians by misrule. Therefore to rule barbarians by misrule was the true and best way of ruling them."

The foreign traders at Canton were in fact subjected to humiliating regulations. They were treated as wayward children under constraint and their daily life was controlled by arbitrary rules. As one writer expressed it, they lived in comfort "in a gilded cage." They were not allowed to have women or arms in their quarters; they could not borrow or lend money; Chinese, in order not to degrade themselves and their country, were forbidden to act as their servants; they could not row for pleasure on the river, nor go for walks unaccompanied by Chinese guardians; they were forbidden to use sedan chairs, the usual Canton vehicle, etc., etc. But so essential was it for purposes of trade to keep on good terms with the officials that this treatment was accepted and a powerful weapon thus put into Chinese hands: a threat to cease trading was an effective answer to every remonstrance.

As the early American officials became aware of the above maxim and its method of application, it is not surprising that when, under foreign guns, China was brought into treaty relations with the Western Powers and led to admit their physical superiority, jurisdiction over American citizens in China was reserved. Accordingly, when Caleb Cushing, first American Minister to China, signed the first Chinese-American treaty at Wang-hea on July 3, 1844, extraterritoriality was made a provision thereof under the following two articles:

Article XXI

Subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China, and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the Consul or other public functionary of the United States authorized according to the laws of the United States; and in order to the prevention of all controversy and dissatisfaction justice shall be equitably and impartially administered on both sides.

Article XXV

All questions in regard to rights, whether of property or person, arising between citizens of the United States in China shall be subject to the jurisdiction of and regulated by the authorities of their own Government; and all controversies occurring in China between the citizens of the United States and the subjects of any other Government shall be regulated by the Treaties existing between the United States and such Governments respectively, without interference on the part of China.

This treaty was followed by treaties, with similar provisions, between China and France, England and other Powers beginning in 1858, until extra-territoriality was a feature of all Chinese treaties with Western Powers. It is to be noticed that Japan was not among the early signers of such a treaty.

The American treaty of 1844 was the first modern treaty in which extra-territoriality was definitely provided for. America was not, however, the first Western Power to exercise control over its nationals in China. England, as early as 1834, when the control of the East India Company over English trade with China was abolished, established a court of criminal and admiralty jurisdiction to be held on board any British ship at Canton to hear cases involving British subjects. Even in the old Canton days English merchants were granted jurisdiction over their foreign servants. Russia, as will be seen below, had by still earlier treaties control of her subjects on the frontier.

After the treaties of 1858 had been in operation for some years, apologists for China, not only Chinese but foreign friends, began to feel that China had been imposed upon and had involuntarily entered into contracts which inflicted some hardships upon her. T. Z. Tyau, a Chinese legal authority, in his book *The Legal Obligations Arising out of Treaty Relations Between China and Other States* has this comment to make: "To the lay mind these privileges known as extraterritoriality assume an importance transcending that of all other grants; to the student of international law they constitute a positive derogation from the prerogatives of the territorial sovereign." Also Dr. Williams, a prominent American missionary, is more emphatic in the following statement. At page 659, Vol. II of his great work, *The Middle Kingdom*, he says:

The year 1858 was fraught with great events, involving the welfare of the people of China and Japan and their future position and progress. Much against their will they had been forced into political relations with Europe and America, and in a measure deprived of their independence under the guise of treaties which erected an *imperium in imperio* in their borders. Their rulers, ignorant of the real meaning of these principles of ex-territoriality, were tied down to observe them, and found themselves within a few years humbled before those of their own subjects who had begun to look to foreigners for protection.

As investigation could demonstrate, such criticisms are not well founded. The fact is that the Chinese treaty negotiators had some grounds to know

what extraterritoriality meant, and we have the testimony of an eye-witness to signing of the English treaty of 1858, "that there was no surprise on the one hand nor concession on the other when extraterritoriality was established by the treaties of 1858."⁵

It is not fair to argue that Chinese statesmen of the first treaty days knew that extraterritoriality was a feature of international law from early ages. Foreign international law was not in their curriculum. It is beyond the scope of this article to go into detailed reference to this feature of international relations in Europe in the Middle Ages and in ancient times, but it is interesting to note, briefly, that extraterritoriality in the Middle Ages was not considered at all a derogation of sovereignty, and different degrees of extraterritoriality were the rule rather than the exception. The clergy were under their own laws. The Jews were under a separate jurisdiction. The free cities of Europe had privileges for their citizens in foreign ports. In their relations with the ancient Mediterranean States, of which, however, we must acquit Chinese statesmen of any knowledge, extraterritoriality was recognized. The Republic of Venice in the year 1199 closed a treaty with the Emperor Alexius of Constantinople, providing for extraterritorial treatment of Venetian subjects in Greece. A similar treaty was made a century later. Other treaties of a like character were made with Pisa and Florence in 1154 and 1445. The capitulations with Turkey entered into by the various foreign Powers, including America, antedated the Chinese treaty. In old Japan the principle of extraterritoriality was not unknown. Certain *daimiates* there enjoyed almost complete home rule.

With the above history the Chinese statesmen may have been unfamiliar, but those who signed the treaty with the United States in 1844 may be charged with more knowledge of extraterritoriality from their own history than Dr. Williams' statement above would seem to attribute to them. There are many instances of a jurisdiction resembling extraterritoriality in the history of China herself. The Buddhist and Taoist priesthood in Peking for centuries has been subject in certain matters to priestly courts.⁶ To a certain extent the Miaotzu and the Lolo tribes entering into Southern China brought with them their own legal customs. From the beginning of the Manchu dynasty to the days of the Republic there have been distinctions between Chinese and Manchus before the law which suggest extraterritorial privileges. Between China and Russia in the seventeenth and eighteenth centuries extraterritorial jurisdiction over their respective subjects was established in an explicit way.

Article II of the treaty of 1689 between Russia and China provided:

Que s'il arrive qu'une ou deux personnes de petite conséquence fassent quelques excursions au-delà des limites, soit pour chasser, soit pour voler ou piller, on les prendra aussitôt, et on les menera aux Gouverneurs et aux

⁵ The Life of Sir Harry Parkes, Vol. 2, p. 314.

⁶ J. J. M. de Groot, *Sectarian and Religious Persecution in China*, Vol. 1, pp. 102, 103.

*Officiers établis sur les frontières des deux Empires, et les dits Gouverneurs informés de la qualité du crime, les puniront comme ils le mériteront.*⁷

The Russo-Chinese treaty of October 21, 1727, Article X, contained this provision: "*Ceux qui passent la frontière et volent des chameaux ou du bétail seront remis à leurs juges naturels.*"⁸

The fact is that, notwithstanding the claims of modern Chinese publicists that China had imposed upon her a system which she did not understand, the Chinese knew as much of it as they cared to know and were willing enough to abandon to foreign officials control of an element of the population which they regarded as not amenable to reason and which they were admitting to their country only under armed pressure.

It seems never to have been the extraterritoriality in principle to which Chinese statesmen objected but the incidents of conflict under it. In the thirty and more years of the writer's acquaintance with China the foreign merchant has always been welcome, and the missionary was not opposed on account of his faith but on account of the friction which his keen spirit of evangelism aroused in remote places. On one occasion years ago, in the writer's presence, when the Ministers of the Tsungli Yamen—as the Chinese Foreign Office was then called—had listened with respectful attention to an explanation of missionary activity by an eloquent Welsh missionary, the fine looking Chinese Premier, bowing his grey head thoughtfully over the table, said, "We have no objection to the missionary; if we could have the missionary doctrine without the missionary cases all would be well." In the early treaty days Prince Kung, then head of the Chinese Foreign Office, said to the British Minister, "Take away your opium and your missionaries and you will be welcome."⁹

It is probably true that neither the Chinese nor the foreign negotiators realized the extent to which foreigners and their trade were to come to China under extraterritorial protection. The world has seen the cabbage patches in the fields near the Chinese ports of Shanghai, Tientsin, Hankow and elsewhere, granted by China as residence and business sites for foreigners, grow into the great commercial cities of today where, under protection of foreign law and order, a gigantic commerce has developed and within the confines of which thousands of Chinese have found a profitable and secure abode, and to which even to this day fugitives from the rigors of Chinese law fly for refuge. The foreign concessions, as they are called, are clean, wholesome, with well-built homes and the conveniences of modern life. They are at the same time a lesson and a reproach to China. These communities exist and flourish because extraterritoriality guarantees liberty and property there, and before these guarantees are removed the Western world would be wise to provide that equal privileges will be given under Chinese rule.

⁷ Treaties between China and Foreign States, Vol. I, 2d ed., p. 5.

⁸ *Ibid.*, p. 36.

⁹ These from the *Land of Sinim*, by Sir Robert Hart, p. 68.

It is not only the Chinese but the foreign negotiators who did not realize what they were creating by extraterritoriality. A story is told at Shanghai, now a modern city of half a million and more inhabitants, with fire department, police, tramways, trackless trolleys, waterworks, parks, gardens and hundreds of miles of paved roads, to the effect that at a rate-payers' meeting of the municipality's early days the question of road construction came up, and it was unanimously agreed that Shanghai needed only roads wide enough for a coolie to carry tea boxes through them. The same municipality is now spending thousands of dollars annually to widen those early lanes. In the same way the restrictions of extraterritoriality have been outgrown; foreign trade resents its limitations. It is probable that had the earliest foreign treaty negotiators known what was to happen under the provisions of those treaties, the articles under consideration would have been differently couched. It is even to be imagined that extraterritoriality might have been omitted from them and the foreign negotiators might have insisted that foreigners should be admitted under Chinese law and that the law should be modified to make this possible. Under such circumstances progress might have been very great. It is even possible to imagine that we could have enforced such improvements in Chinese jurisprudence as to be a blessing to the Chinese themselves and to have removed the barrier that now exists between the foreigner and the Chinese. We might have done better thus than we have done by leaving the Chinese legal system and the foreign to go on side by side without encouragement to one nor to the other to adapt itself to the necessities of both.

As a matter of fact we do not now find extraterritoriality working entirely satisfactorily. It has led to the continuance in China side by side of American courts, British, Japanese, French, German, Portuguese, etc.; courts, in fact one for each treaty Power. We have a great variety of codes in operation in one country. There is no possibility of developing a law based on judicial decisions because there is no validity in a legal decision except in the court which pronounces it. The Chinese merchant in legal controversies with his foreign customers must seek redress in any one of the dozen or more courts to which said customer may be subject. A decision in one court today will give no clue as to how an identical controversy may be decided in another court tomorrow.

The most violent partisan of maintenance of foreign rights in China must admit that there is room for reform. The request for this reform cannot, as above intimated, be based on any allegation that the Chinese treaty negotiators were deceived or bullied, but on the real interests of all parties to the treaties. This reform should not take the form of a rude abolition of extraterritorial jurisdiction before a substitute therefor has been perfected, but there is reason enough to say to the Chinese Government, that it is right in wanting to get rid of the present system. The steps towards the establishment of Chinese full jurisdiction may be long and slow but they need not be

impossible—patience and mutual yielding must characterize the operation. There would be needed a code founded on foreign judicial practice and covering the needs of foreign litigants of whatever nationality; then a system of courts to carry out the execution of this code; then a time of probation with foreign expert judicial coöperation in training the magistrates of these courts. It is evident that the plan must be tentative; the builders of the new system must adjust their work to difficulties as they arise; but intelligently handled there is no inherent reason why we should not have after some decades a creditable administration in China of laws adapted to the requirements of the Chinese and of the foreigners there resident, and a consequent freeing of trade and residence from the present cumbrous embarrassments of extra-territoriality.

FOREIGN JURISDICTION IN CHINA

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Because of the deficiencies in her laws and judicial administration, China has for eighty years passively accepted the arrangement, sanctioned by treaties, under which foreigners found within her territory are clothed with extraterritorial rights.¹ The privileged status thus accorded to foreigners virtually established in that country an anomalous system of foreign jurisdictions. Now that the Chinese laws and judicial machinery are being improved in accordance with modern requirements, what was once a Chinese attitude of silent acquiescence toward the restriction of sovereignty has to-day become one of active and energetic protest against its further continuance.

The expression of the desire on the part of China to have the limitation upon her judicial independence withdrawn is, of course, a simple and easy matter. But whether that desire is capable of being translated into positive action is a question not to be so easily disposed of. With the formal adoption by the Washington Conference of the resolutions aiming toward the abolition of extraterritoriality in China, it was then generally felt that a most gratifying beginning had been achieved by China toward the eventual realization of her national aspiration. But two years have elapsed with the resolutions remaining what they were when they were signed. Because of the utter impotence of the central government to make its authority felt and respected throughout the land, China has repeatedly requested the postponement of the arrival in that country of the proposed international commission provided by one of the Washington resolutions. Although a sum of \$200,000 has been appropriated by the Chinese Government to defray the expenses of the forthcoming investigation,² it does not appear altogether advantageous to undertake now the execution of the decisions reached at the conference while political conditions in China are so unfavorable.

Aside from the circumstances adverse to a judicial investigation, one is led to inquire into the actual judicial progress that has been attained and claimed

¹ Exemption from Chinese territorial jurisdiction is enjoyed only by nationals of states with which China has conceded this privilege by treaty. See Koo, *The Status of Aliens in China*, Ch. VI.

² *North China Herald*, Oct. 28, 1922, p. 210. There is much uncertainty as to when this investigation is to take place. France, on the 8th of January, declined to name a delegate to the proposed commission to visit China as provided by the Washington Conference, on the ground that China has not yet agreed to pay the Boxer indemnity in gold francs, China having sought to pay in paper francs. *New York Times*, Jan. 9, 1924, p. 21.

by China. It is on this basis alone that we might hope to solve the intricate problems directly concerning the abolition of extraterritoriality. And then, too, it is also on this basis that one may profitably gauge and determine China's capability in fulfilling within a reasonable time the requirements for the recovery of her judicial rights. With the actual legal and judicial reforms ascertained, the problem of formulating a definite scheme for the relinquishment by the treaty states of extraterritorial rights would be made less perplexing.

Until 1902 no honest attempt had been made by China to nullify in any way the limitation imposed upon her territorial jurisdiction. But when her progressive island neighbor, Japan, by adapting and harmonizing her legal and judicial systems to western standards, regained in 1899 the right to complete jurisdiction over foreign residents, China then manifested a similar desire. Accordingly, she induced Great Britain to recognize her aspiration in the following language as contained in Article XII of the so-called Mackay Treaty of 1902:

China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant her in so doing.³

By incorporating in their commercial treaties with China a similar pledge, the United States and Japan in 1903, and Sweden in 1908, further promoted the initial efforts of China to westernize her judicial system. With such encouraging expressions of sympathetic support the outlook of eliminating the objectionable jurisdictions within a reasonable time was, indeed, promising.

But the satisfactory solution of the problem was not destined to be so simple as it appeared. After having made known her desire, China made no headway in the rehabilitation of her judiciary. Consequently, the problem remained practically untouched. Under the republican régime, however, China claims to have "made considerable progress in the administration of justice";⁴ but whether or not those elemental conditions so essential to the ordinary protection of life and property have been adequately assured by the projected reforms will furnish an interesting field of investigation.

It is perhaps misleading to state that China made no serious effort towards introducing a modern legal and judicial system into the country. Inasmuch as the proposed changes involved a radical departure from the established

³ MacMurray, *Treaties and Agreements with and concerning China*, Vol. I, No. 1902/7, p. 351.

⁴ *The Shantung Question: A Statement of China's Claims together with Important Documents Submitted to the Peace Conference in Paris, 1919*, reprinted by the Chinese Welfare Society in America, p. 162.

practices of dispensing justice throughout the land, it naturally required time before her desire, as expressed in 1902 and 1903, could be translated into action. And it was not until after the conclusion of the Russo-Japanese War, in 1905, that earnest steps were taken to institute the necessary reforms. In that year a commission under Dr. Wu Ting-fang and Shen Kia-pen was constituted for that purpose. However, the execution of the reforms was slow and uncertain,⁵ and whatever progress has been made in that direction was attained during the past ten years under the Republic.

Briefly stated, China has "adopted a National Constitution prescribing, among others, the separation of governmental powers, assuring to the people their inviolable fundamental rights of life and property and guaranteeing the complete independence and ample protection of judicial officers and their entire freedom from interference on the part of the executive or legislative powers."⁶ "Three grades of new courts have been established, namely: District Courts, High Courts or Courts of Appeals, and the Taliyuan or Supreme Court in Peking," supplemented by a system of procurators of three corresponding grades. There are, among the improvements in legal procedure, "the complete separation between civil and criminal cases, the publicity of all trials and judgments rendered," a system of legal counsel, and the non-employment of corporal punishment to coerce confessions. The prison and police systems have been reformed and improved;⁷ and, finally, "five codes have been prepared, some of which have already been put into force: (a) the Civil Code, still in course of revision; (b) the Criminal Code, in force since 1912; (c) the Code of Civil Procedure, and (d) the Code of Criminal Procedure, both of which have . . . been promulgated; and (e) the Commercial Code, part of which had been put into force."⁸

Altogether these reforms add an inspiring and novel chapter to the legal and judicial history of China. In view of the fact that this has been accomplished under the most trying conditions of political instability, great credit is due to China for the extraordinary advancement made in this direction.

Although what has been achieved in the reforms are in themselves indicative of China's ability to reach her goal eventually, there is much speculation as to the actual administration of the new laws. Has China established a national judicial system capable of dispensing justice according to the spirit and standard of the West? Vital facts pertaining to this point seem to be

⁵ The results of the commission's labors were vigorously attacked and eventually shelved by the opposition of influential viceroys in the provinces because of the novelty of the legal code which had been drawn up.

⁶ The latest Chinese Constitution, promulgated on October 10, 1923, contains provisions not dissimilar to those dealing with the same subjects found in the provisional Constitution of 1912. Articles 4 to 21 of Section 4 deal with the rights, duties and privileges of citizens; Section 9 (articles 97 to 102) with the judiciary; and Section 10 (Articles 103 to 108) with the law. *China Weekly Review*, Oct. 20, 1923, p. 269; *North China Herald*, Oct. 13, 1923, p. 84.

⁷ *The Shantung Question*, etc., *op. cit.*, pp. 162-3.

⁸ Senate Doc., No. 126, 67th Cong., 2nd sess., p. 476.

lacking. It is, of course, not to be expected that corresponding progress has been attained in the administration of the laws. China has frankly admitted the many imperfections arising from her brief experience in this direction.⁹ But she has now the necessary laws which, if justly and honestly administered, will protect adequately the interests of individuals. The relinquishment by the treaty states of their extraterritorial rights at an early date will depend solely upon the attainment of that condition.

It is, however, not so sure that China alone could bring about those conditions so essential to the efficient administration of the law. In remodelling an institution or a system on a Western pattern, and proposing to bring it into accord with Western practice, China must needs invite the coöperation of Western Powers. The necessity for international aid is all the more pressing and cogent when consideration is given to the fact that the consent of the Powers is requisite to the suppression of extraterritoriality in China. Happily, by action of the Washington Conference the eight participating Powers, all of which are treaty states, not only are pledged to establish an international commission "to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the Governments of the several Powers . . . their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China"; but also "to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as to warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality."¹⁰ As a protective measure it is further provided that "in no case shall any of the said Powers make its acceptance of all or any portion of such recommendations (of the commission) either directly or indirectly dependent on the granting by China of any special concession, favor, benefit, or immunity, whether political or economic."¹¹

Now this most important resolution, if carried out in the same spirit as it was formulated and adopted by the conference, should reduce to a minimum whatever retarding influences that may arise from international indifference, inaction, or interference, and should provide China with a maximum degree of freedom and choice in readjusting her judicial administration in accord with the standard of efficiency obtaining in the more advanced countries of the West. An examination of her new legal codes will convince any one that China possesses laws quite as scientific and humane as any in the West.¹² It

⁹ The Shantung Question, *op. cit.*, p. 162.

¹⁰ Senate Doc., *op. cit.*, p. 514.

¹¹ *Ibid.*, pp. 514-15.

¹² See C. H. Wang's "Revision of the Chinese Criminal Code," 13 Illinois Law Review (1918-1919); also Wenfu Yiko Hu's "Progress in the Chinese Administration of Justice," 6 Philippine Law Review, 98.

remains, therefore, a question whether or not China will take full advantage of the present opportunity by administering these codes in such a manner as to win the respect and confidence of the treaty states.

It is, however, not to be overlooked that the Washington resolutions failed to dispose of the proposal to abolish extraterritoriality. Ways and means have yet to be devised for that purpose. In all probability the findings and recommendations of the international commission that is to visit China will consider a workable scheme and how it should be executed.

In discharging its delicate responsibilities the commission will find China's viewpoint towards the irritating subject of extraterritoriality entering into its considerations quite prominently. This is only natural. For, aside from the question of the inherent and practical defects of the system, China would desire a settlement compatible with her national interests. And, consequently, she will press for a clear understanding of the Chinese position. This phase of the question may be better appreciated when the fact is acknowledged that it is China which will be the subject of experimentation—that is, her judiciary is to be radically changed to meet the requirements of the treaty states. An adequate understanding of the Chinese viewpoint is the key to the equitable solution of the problem.

Why China should resent so strongly the system of extraterritoriality and should advocate so energetically its withdrawal in recent years may be traced to the rapidly growing national consciousness—a most potent factor in the present rejuvenation of the country. Any impediments or limitations imposed upon her freedom of sovereign action are certain to arouse obstinate resistance. Inasmuch as extraterritoriality falls within such limitations, not only as fettering her sovereignty but viewed as having been extracted by force, it has become an object of national protest. The causes which occasioned its introduction and establishment in China have been brought under careful scrutiny since 1904. Herein lies the explanation for the movement of judicial reforms and some of its extraordinary achievements of recent years.

Yet a due appreciation of the intensity of that moral force which induced the treaty states to acknowledge this particular Chinese aspiration may not be gained without undertaking a brief review of how the Chinese people have come to hold their present attitude towards the question of extraterritoriality.

The history of extraterritorial jurisdiction in China dates back to the Chinese-British supplementary treaty of 1843.¹³ The provision in question constituted the original basis upon which foreigners in China legally withdrew their submission from the operation of the territorial control of China, although it was left to the Chinese-American treaty of Wangheah, 1844, to supply explicitly the principles of extraterritoriality,¹⁴ which became the model

¹³ Article XIII. See *Treaties, Conventions, etc., between China and Foreign States*, Vol. I, p. 388.

¹⁴ Articles XXI, XXIV, and XXV.

for similar provisions in subsequent agreements between China and other foreign states.

China was most reluctant to surrender her jurisdictional authority over resident foreigners. Theretofore all of them, irrespective of their mission or object in China, had been amenable to, and fully recognized, her territorial sovereignty. Never in her history had she failed to insist upon the exercise of complete jurisdiction over all foreigners found within her dominion.¹⁵ True, it has been pointed out that in the ninth century the Arab community at Canton enjoyed the privilege of being governed by a representative chosen from among its own members. But, in this instance, Chinese laws and authority prevailed in all cases, and the arrangement existed purely by sufferance and not as of legal right.

As late as the sixteenth century the Chinese policy toward foreigners and foreign intercourse was quite liberal. There were no laws restricting their movements within the empire or regulations impeding their trade. But when the Portuguese arrived off the southeastern coast of China during the first quarter of the sixteenth century and committed acts which struck directly against the morals, peace and authority of the empire, they compelled the Chinese to reverse the good opinion formed of "the peoples from the West."¹⁶ Henceforth, all Europeans were treated with a degree of suspicion and exclusion that had not been deemed necessary to be exercised toward their peaceful and self-respecting predecessors.

The Spaniards following the Portuguese were no better. After their conquest of the Philippine Islands in 1543, they instituted two wanton and indiscriminate massacres of Chinese settlers and traders, one in 1603 and the other in 1662, to the appalling number of some twenty odd thousands.¹⁷ This sort of treatment meted out to these inoffensive Chinese could not but influence adversely the changing character of the new Chinese policy towards foreign intercourse.¹⁸

The Dutch heralded their arrival in the Far East by a naval attack on Macao, a Portuguese settlement on Chinese territory.¹⁹ The naval enterprise being unsuccessful, they proceeded northward and seized the Pescadore Islands. Here they maltreated the natives, subjects of China, with extreme severity, and fortified the place without the slightest formality.²⁰ There had

¹⁵ In the Treaty of Nerchinsk (1689) with Russia, China agreed to deliver over to Russian officials stationed on the Russian side of the border any Russians caught committing acts of violence on the Chinese side. The arrangement was, however, based on the principle of reciprocity.

¹⁶ Davis, *China and Its Inhabitants*, Vol. I, p. 20; Williams, *The Middle Kingdom*, Vol. II, p. 427.

¹⁷ Inaba, *History of the Tsing Dynasty* (in Chinese), Vol. II, p. 59; Morse, *International Relations of the Chinese Empire*, Vol. I, p. 16.

¹⁸ Williams, *op. cit.*, pp. 432-3.

¹⁹ *Ibid.*, p. 433; Douglas, *Europe and the Far East*, p. 1c.

²⁰ Liu, *Recent History of the Foreign Relations of China* (in Chinese), p. 4.

been no quarrel nor even any cause for this belligerent conduct; and no state of war existed, unless the lease of Macao to the Portuguese by China could be construed as a *casus belli*! ²¹

Finally, the appearance of the English in Chinese waters only confirmed the growing suspicion of the Chinese that all Europeans were bent on violence, plunder and conquest.²² While the English made less use of force to gain their objective, that of trade, they were none the less considered *persona non grata*; for from the very beginning of their arrival, their commercial competitors—the Portuguese—launched against them a campaign of invidious misrepresentation, slandering them as “rogues, thieves, beggars and what not.” ²³

In view of these unpleasant incidents, occurring by no means as isolated instances during this early period of maritime intercourse, China was prompted by the instinct of self-preservation to restrict within the narrowest limits her contact with the people from the West.²⁴ Retrospectively, China committed a fatal mistake in foreign policy. Closing her ports as the most efficacious means of compelling these newcomers—unscrupulous adventurers and fortune-hunters as they were—to respect her independence and authority was, from the outset, a dubious expedient. Although China was within her right in imposing whatever regulations she deemed necessary to safeguard her national safety and interests, that policy only invited increased pressure from without. Consequently, the ensuing friction between China and the West, as represented by the Chinese provincial officials, on the one hand, and the European traders on the other, led unfortunately to the breeding of national prejudice, enmity and jealousy, and, eventually, to strained relations, culminating in armed hostilities.

Out of this inevitable friction there emerged a serious question the solution of which, among other things, was left to the arbitrament of war. This was the irritating question of Chinese jurisdiction over foreigners in general and the European traders in particular. Resistance by the latter to Chinese authority had incurred the rigid application by China of the right of territorial jurisdiction. China had for centuries before insisted upon and exercised complete jurisdiction over all foreigners within her domain. And the tenacity with which she clung to this right, even in the face of attempted usurpations, up to the signing of the Treaty of Nanking in

²¹ Portugal was then temporarily united with Spain under Philip II (1580-1640), and the Netherlands was waging a war of independence against Spanish political domination. But it cannot be admitted that the Dutch had the right to attack Macao because it was a Portuguese settlement located on Chinese soil.

²² Wang and Hsu, *History of the Manchu Dynasty* (in Chinese), Vol. I, p. 96; Inaba, *op. cit.*, p. 62.

²³ Davis, *op. cit.*, p. 34; Sargent, *Anglo-Chinese Commerce and Diplomacy*, p. 4.

²⁴ The Manchus, one of the two and the last of alien rulers of China, were also actuated by the fear that the Europeans might aid the conquered Chinese natives to thwart their newly established dominion over China.

1842 only proved her honest desire to maintain her territorial sovereignty intact.²⁵

In enforcing her jurisdiction China antagonized all foreign interests, especially those of innocent traders. Upon the ground that the spirit and letter of Chinese laws were unduly harsh²⁶ and the trade regulations oppressive, coupled with the venality of some Chinese officials who made life intolerable, foreigners in general were bent on defeating the purposes of the Chinese authorities. Complaints were most numerous in regard to the exercise of jurisdiction. Foreigners submitted to it only when the native officials resorted to the interdiction of trade. This was a most efficacious weapon in compelling obedience. But each and every time trade was stopped in order to induce an accused foreigner to be surrendered for trial by the Chinese authorities, the innocent traders of the nationality of the accused were made to suffer for what they were not responsible. And the greater the resistance against the exercise of Chinese jurisdiction, the greater, correspondingly, was the vigor and rigidity applied to the laws administered in regard to those who violated them. It became, therefore, not a surprising development when Western nations, led by the English, took full advantage of the first opportunity that offered to rescue their nationals from what was alleged to be an oppressive situation.

The defeat of China by England (1840-42) paved the way for the application of relief. China was compelled, among other things, to grant exemption from her territorial jurisdiction to all British subjects found within her dominion. Other Western states followed with demands for similar concessions and with equal success.

It was under these circumstances that the jurisdictional right over foreigners was lost to China. Insisting to the very last upon the exercise of this sovereign right, she accepted what was the best bargain of an inevitable settlement. However, this solution was greeted with some satisfaction by certain native officials because it eliminated, for the time being, a most annoying problem confronting the local provincial authorities charged with the conduct and responsibilities of the foreign relations of the country. As the number of foreign residents was comparatively insignificant, and confined to the few treaty ports, Chinese officialdom viewed the concession as an advantageous expedient.²⁷

²⁵ See Morse, *op. cit.*, Ch. V; also Koo, *op. cit.*, p. 65.

²⁶ Referring to the complaints of Europeans and Americans against the severity of the former Chinese penal code and the injustice of the Chinese courts, Professor E. T. Williams says: "There was much ground for these complaints, but, in the beginning of Western intercourse with China, Chinese codes were less severe than those of Europe. Many complaints were due to an ignorance of the Chinese language and of the Chinese law." Article on "China at the Washington Conference" in the *University of California Chronicle*, Vol. XXIV, p. 177.

²⁷ Jernigan calls attention to the fact that at the time "China wanted as little intercourse as possible with foreigners, and seeing that it was very difficult to keep them out of her territory, she was willing to let them manage their own household affairs, as best suited themselves when they took up their abode therein." *China in Law and Commerce*, p. 194.

As soon as China found the system of extraterritoriality disagreeable, it was only a matter of time when demand would be made upon the treaty states for its abolition. In recent years the cry raised against it has become incessant, notwithstanding that China is not as yet in a position to assume the task and responsibilities involved in the administration of justice to foreign residents. Nevertheless, China's protests have evoked proposals aiming at the abolition of the objectionable régime. These various proposals will be analyzed, prefaced with a brief review of the few basic principles upon which the régime of extraterritorial jurisdiction is constructed, the nature of the protection provided, and its practical operation.

Extraterritorial jurisdiction in China is a right exercised solely by virtue of an express grant which is embodied in a treaty or treaties between China and Western states.²⁸ By granting extraterritorial rights to foreigners, China divested herself of the authority to control them judicially. Chinese courts can no more try and punish an accused individual of such a privileged class, who may be a defendant in a civil suit or who has violated a local law,²⁹ than they can function outside of China without sanctions of any kind. It is not their persons only, but also the property of such foreigners, which cannot be reached by the processes of Chinese courts.³⁰ Notwithstanding that they actually live in China, enjoying the privileges of residence, the hospitality, and the protection of the Chinese Government,³¹ these foreigners are practically governed by their own national laws administered by officials of their home state.

The immunity thus conferred upon foreigners seems, indeed, extensive. However, it is not as sweeping and formidable as it may appear. For its extent, like the right itself, is defined by the treaties. Moreover, by reason of the fact that extraterritoriality is an international servitude, the treaty provisions upon which the resultant jurisdiction is based are strictly construed.³² Further, the inherent and practical defects of extraterritorial

²⁸ Piggott, *Extraterritoriality*, p. 18.

²⁹ Arrest may, however, be effected by the native Chinese authorities in the event of such foreigner or foreigners being caught in the commission of a crime. But, even in this case, the offenders must be turned over immediately to the nearest consul of their nationality for trial and punishment. Moreover, while under arrest, they must not be subjected to any ill-usage in excess of necessary restraint at the hands of the native officials making the arrest and conveying them to their nearest consulate.

³⁰ Even native servants and employees of the privileged foreigners, who generally live within the foreign settlements in the treaty ports, cannot be arrested without the consent of the senior consul of the settlement or consuls of their foreign employer.

³¹ China is required by the treaties to place foreigners on a common footing of amity and good-will with her own subjects, and agrees that they "shall receive and enjoy, for themselves and everything appertaining to them, the protection of the local authorities of government, who shall defend them from all insult and injury of any sort."

³² Hall, *International Law* (7th ed.), p. 167; Hall, *Foreign Jurisdiction of the British Crown*, p. 135; Moore, *International Law Digest*, Vol. II, p. 18. However, the policy of the treaty states towards China respecting the interpretation of treaty provisions has always been, and still is, one of very liberal construction.

jurisdiction may so circumscribe the scope of the immunity that they, too, constitute additional restrictions.

While foreigners who have incurred the law's displeasure are exempt from the judicial intervention of the Chinese authorities, they are by no means released from the obligation of obeying the native laws. "There is nothing to prevent the application . . . of the ordinary principle," writes Pig-gott, "that a foreigner owes temporary allegiance to the law of that country. The fact that his offences are decreed to be judged, and his disputes are allowed to be settled, by the law of his own country, does not remove him from the sphere of his temporary allegiance and obedience."³³ What has been yielded in the treaties is, therefore, merely the treaty right that foreign offenders shall be punished by their own national authorities and in accordance with their own national laws. And this in no way means that they are at liberty to break or violate the native laws.³⁴

Once the treaty right to exercise jurisdiction over its own nationals within another state is acquired, the treaty state is obligated, in the nature of the case, to provide the appropriate and necessary agencies and machinery for its administration. The kind of machinery provided may vary; but the proper administration of justice demands that suitable agencies and a qualified personnel should be installed. The fact that extraterritorial rights are acquired for the sole purpose of mitigating, rather than aggravating, existing injustice, alleged or real, in a country deficient in modern methods of dispensing justice, should always guide and control any determination in the selection and institution of appropriate and adequate instrumentalities.

Owing to the proportionately greater expense, the seeming lack of interest on the part of the governments of the treaty states, and the comparatively small number of cases that comes up for adjudication, no separate establishments were provided in the beginning by the treaty states. They invariably utilized their consular and diplomatic services for the purpose, with the bulk of the work falling on the former. Therefore, in addition to his commercial functions, the consul of a treaty state performs the numerous rôles not only of a judge sitting over civil and criminal actions instituted against his fellow-nationals, of a coroner, registrar, probate judge, and police magistrate, but also that of an advocate in the court of the native defendant on behalf of his aggrieved fellow-national.

The questionable results attained in a system of administering justice by

³³ Exterritoriality, p. 21.

³⁴ "For example, if Chinese law prohibits Chinese from going through a certain passage, foreigners cannot claim to go through that forbidden passage in virtue of extraterritoriality. If they go through it, they thereby break a Chinese law; their own national officials are to punish them in accordance with such laws as provide for analogous cases in their country." Portion of the circular of March, 1878, sent by the Chinese Foreign Office to Chinese Ministers abroad relating to the subject of extraterritorial jurisdiction as interpreted by China. U. S. Foreign Relations (1880), p. 177; Hart, *These from the Land of Sinim*, Appendix I, pp. 176-7.

consular officers, who, for the most part, are untrained in the law, are obvious. Remedies have been applied, however, as the glaring defects were from time to time brought to light. Two or three treaty states have introduced legal talent into their consular service to take over the judicial duties from overburdened consular officers. Great Britain has advanced a step further by establishing, in 1904, "His Britannic Majesty's Supreme Court for China" to supplement the consular courts. The United States likewise in 1906 created "the United States District Court for China." Through these corrective efforts some relief has been provided in bringing about a more dignified and technically correct mode of administering justice in China. However, there still remains much to be desired in the improvement of the machinery. Because of the defects inherent in the system itself, combined with the practical difficulties in administration, it is doubtful whether these extraterritorial courts, even though they constitute an improvement, will ever approach the standards maintained by the judicial organs in the countries of the West. But here is an interesting fact to be noted: despite the objections against the present system of extraterritoriality as a whole, most foreigners in China prefer and uphold it, rather than submit to the jurisdiction of the Chinese courts as they are now constituted.³⁵

In accordance with the rule of suing in the court of the defendant, China has in use what may be called "mixed" tribunals for the trial of Chinese offenders³⁶ upon complaint of aggrieved foreigners. These are territorial courts,³⁷ presided over by Chinese magistrates who possess, at least in theory, complete jurisdiction over all persons within their respective districts, natives as well as foreigners not exempted by treaty. Here Chinese laws are enforced.

These tribunals of justice, the consular and "mixed" courts, are, in the main, courts of first instance.³⁸ Appeals from their decisions are, there-

³⁵ It appears that foreigners in China insist upon the retention of their extraterritorial rights for two principal reasons: (1) Because the Chinese judiciary is far from having reached that stage of development in the administration of the law as to gain their complete trust and confidence; and (2) because of the natural reluctance to forego the customary protection of their own national officers and governmental agencies in China.

³⁶ Nationals of non-treaty states also come under the jurisdiction of these "mixed" tribunals.

³⁷ It has been contended, though not seriously, that these are not strictly Chinese courts on the ground that the Chinese phrase "hui t'ung," as contained in the Chefoo Convention of 1876 referring to "mixed" cases, meant combined or joint action in judicial proceedings which, correctly interpreted, confers equal authority or voice upon the foreign officer sitting with the Chinese magistrate in rendering decisions; hence the equality of power deprive these courts of its Chinese character. *North China Herald*, Jan. 24, 1906, p. 168.

³⁸ The International Mixed Court at Shanghai is an exception to the rule. It is both a court of first instance and an appellate court. And since it came under the control of the consular body of the International Settlement in 1911, it even has usurped the status of a court of last resort in criminal matters. Chinese offenders are given a rehearing, when there can be shown justification, by the same court which had found them guilty in the first instance.

fore, usually allowed as provided by law. But each treaty state has its own system of appeals. And if any appeal has to come before the highest tribunal in the country of the treaty state, it is removed there irrespective of distance and expense.

Appeals from the "mixed" courts are generally heard by the Prefect of the district sitting with (hui t'ung) the consul-general or consul of the foreign plaintiff.³⁹ Should the matter be further contested, the appeal then goes for final settlement between the Chinese Foreign Office and the chief diplomatic officer of the plaintiff's nationality.

This, in brief, constitutes the judicial machinery or agencies provided both by the treaty states and China under the régime of extraterritoriality in China. It is not a groundless criticism to point out that these are inadequate, cumbersome and defective. The only good purpose the system has well served is the original purpose of the treaty states in establishing extraterritoriality, that of withdrawing their own nationals in China from Chinese territorial jurisdiction and affording them the benefit of their own national laws.

The usefulness or convenience of extraterritoriality to foreigners residing in China does not, however, forever justify its continued existence. If the grounds upon which it came into being have been materially altered, a reconsideration of the equity of the system should be undertaken with a view of modifying it. As a makeshift,⁴⁰ the undue prolongation of its life beyond the point of necessity would only tend to create a national grievance in the state that granted the privilege to foreigners.

Prompted by such reasons, China has launched protests against the extraterritorial régime and has requested an early readjustment on a mutually acceptable basis.⁴¹ Because of their important bearing on any discussion of schemes proposed in substitution for the present arrangement, it may be profitable, even at the risk of monotonous repetition, to reproduce briefly the substance of the Chinese contentions.⁴²

Of the numerous outstanding defects of extraterritoriality in China, the diversity, uncertainty and inadequacy of the laws applied by the consular courts of the various treaty states constitute the first important indictment against the system. In practice these elements operate, singly or together, to produce different decisions in the consular courts of each treaty state when the circumstances and facts are exactly identical; in other words, what makes an act an offence or cause of action in a consular court of one

³⁹ This procedure does not apply to the International Mixed Court and the Mixed Court in the French Concession at Shanghai.

⁴⁰ "Extraterritoriality is at best an unsatisfactory makeshift. It involves a multiplicity of courts, confusion of laws, and calls forth national prejudices." G. Ohlinger, "Extraterritorial Jurisdiction in China," 4 Michigan Law Review, 348.

⁴¹ The first official Chinese protest was presented to the Powers by China at the Paris Peace Conference in 1919.

⁴² The Shantung Question, etc., *op. cit.*, pp. 163-5.

nationality may not be so treated in a court of another nationality.⁴³ Consequently, they give rise to a most unjust inequality of treatment to defendants and at the same time deprive the plaintiffs of the justice which is their due.

Secondly, the consular courts are empowered to take cognizance only of the acts of their own nationals. In short, their jurisdiction is personal. This defect conduces to the compromising of justice, because the court has no power to compel a witness of another nationality to testify. Nor has the court power to inflict punishment, either by fine or imprisonment, for perjury committed by a person of another nationality. Neither has it power to entertain a counter-claim filed by the defendant (of its own nationality) against the plaintiff of another nationality in the dispute before it.

Thirdly, China finds extraterritoriality seriously deficient in the event of a foreigner committing a crime in the remote interior. The treaties stipulate that such a person "shall be handed over to the nearest consul (of his nationality) for punishment." But if the latter is stationed, as he generally is, at a great distance from the scene of the crime, the accused is practically assured of his liberty because the personal appearance at court of native witnesses is made most difficult, if not impossible, owing to the poor communications, and the time and expense required to make the trip. Insufficiency of evidence has too frequently resulted in the denial of justice.

Fourthly, the exercise by consuls of judicial functions is not conducive to the impartial administration of the law. They are unfitted for the task for three principal reasons: (1) Their first duty is to protect the interests and persons of their nationals; (2) they are generally men not trained in the law; and (3) their national bias often creeps unconsciously into their action and decisions.⁴⁴

Fifthly, "There is a multiplicity of courts in one and the same locality, and the interrelation of such courts has given rise to a legal situation perplexing both to the trained lawyer and to the layman."⁴⁵ This arrange-

⁴³ Italians participating in the illicit trade in opium, for example, until October, 1921, absolutely escaped from punishment by their own consular courts, because no Italian law penalizing such trading had been passed by the Italian Government previous to that date. Before the law was passed the worst that could have happened to an Italian detected while trading in opium would have been the confiscation of the commodity by the Chinese Maritime Customs.

⁴⁴ This evil is fully felt in the "mixed" courts because, contrary to general belief, the foreign assessor, who is usually a junior in his consular service, actually participates in the decision, though not formally. By the treaties he is allowed to attend and watch the proceedings where his nationals are plaintiffs in the interest of justice and to protest against any irregularities; but he has arrogated to himself the power of dictating the judgment. He is there to protect the interests of his nationals, and the Chinese magistrate is fully aware of it. Consequently, the proceedings too often develop into a mere wrangle between the two. Ohlinger, *op. cit.*, pp. 345-6; Latter, *The Government of Foreigners in China*, 19 *Law Quarterly Review*, 321.

⁴⁵ Senate Doc., *op. cit.*, p. 475; *North China Herald*, April 27, 1906, p. 211.

ment, in practice, produces delay, if not ultimately a miscarriage of justice; for the complainant who has been injured in his rights or person by nationals of several treaty states, and who is therefore, obliged to bring separate suits in each of the many consular courts, will have to contend with as many sets of foreign laws as there are defendants in the case. . And since the several suits pending before the consular courts are decided under different systems of law, the uncertainty of the justice due him is very great, and the results, after all, may be prejudicial to his interests.

And lastly, though not the least important, foreigners in China claim, under cover of extraterritoriality, immunity from local taxes and excises which the natives are required to pay regularly to the governmental exchequer.⁴⁶

These objections comprise, in the main, the Chinese indictments against the further maintenance of the system of extraterritorial jurisdiction in China.

There is no doubt that China is sincere in her efforts toward rehabilitating her national judicial system. The most important treaty states have shown an equal sincerity in assisting her by recognizing officially, at the Washington Conference, the principle of relinquishing their extraterritorial rights. Yet the delicate and complicated problem is far from being considered solved. The abolition of extraterritoriality in China must needs evolve an equitable and practical substitute for the present régime and take into consideration the period of time required by China completely to regain her judicial sovereignty.

Inasmuch as the ultimate relinquishment of extraterritorial rights by the treaty states depends, after all, upon the actual state of the Chinese laws and their administration, it may be pardonable to restate what China has achieved in legal and judicial reforms. According to Dr. Wang Chunghui:

A law codification mission for the compilation and revision of laws has been sitting since 1904. Five codes have been prepared, some of which have already been put into force: (a) The Civil Code, still in the course of revision; (b) the Criminal Code, in force since 1912; (c) the Code of Civil Procedure, and (d) the Code of Criminal Procedure, both of which have . . . been promulgated; and (e) the Commercial Code, part of which had been put into force.

These codes have been prepared with the assistance of foreign experts, and are based on principles of modern jurisprudence. Among the numerous supplementary laws special mention might be made of a law, called "Rules for the Application of Foreign Laws," which dealt with matters relating to private international law. Under these rules, foreign law is given ample application. Then there is a new system of law courts established since 1910. The judges are all modern, trained lawyers, and no one could be appointed a judge unless he had attained the requisite legal training. These are some of the reforms which had been carried out in China.⁴⁷

⁴⁶ Senate Doc., *op. cit.*, p. 476.

⁴⁷ Senate Doc., *op. cit.*, p. 476.

China herself was first to present a plan. At the Paris Peace Conference, in 1919, she requested that the régime of extraterritoriality disappear at the expiration of a definite period and upon the fulfillment of the following conditions:

- (1) The promulgation of a Criminal, a Civil, and a Commercial Code, a Code of Civil Procedure and a Code of Criminal Procedure.
- (2) The establishment of new courts in all the districts which once formed the chief districts of the old prefectural divisions, that is to say, in fact, in all the localities where foreigners reside.⁴⁸

And she undertakes "that by the end of 1924 the above-mentioned conditions shall be fulfilled."⁴⁹

"On the other hand, she requests the treaty states to give their promise that upon the fulfillment of the conditions they will at once relinquish their consular jurisdiction and the jurisdiction of their special courts (if they have any) in China." And before the actual abolition of the system now in vogue, she requests the Powers immediately to agree:

(a) That every mixed case, civil or criminal, where the defendant or accused is a Chinese, be tried and adjudicated by Chinese courts without the presence or interference of any consular or representative in the procedure or judgment.⁵⁰

(b) That the warrants issued or judgments delivered by Chinese courts may be executed within the concessions or within the precincts of any building belonging to a foreigner, without preliminary examination by any consular or foreign judicial officer.⁵¹

Complementary to the above Chinese official proposal, Professor W. W. Willoughby, sometime Legal Adviser to the Chinese Government, makes the following suggestions:

The most promising mode by which the Chinese could be aided in bringing about a situation under which it would be expedient to abolish extraterritoriality would be for the Powers to permit the Chinese, as a first step, to establish courts for the trial of cases in which foreigners are parties either as defendants or plaintiffs, that would be truly "mixed" in character; that is, tribunals presided over by two or more judges of whom one at least should be a foreigner learned in the law and experienced in administration. These courts would be Chinese courts, and the judges Chinese officials, the judges who are foreigners, however, to be appointed upon the nomination of, or at least with the approval of, the foreign offices of the Treaty Powers. In those cases in which the judgments rendered are not approved by the foreign judge, a right of appeal should lie to a superior and the cases

⁴⁸ Willoughby, *Foreign Rights and Interests in China*, p. 78.

⁴⁹ The Shantung Question, etc., *op. cit.*, p. 165.

⁵⁰ The abuse of the assessor system by consular officials has done more than any other factor in humiliating Chinese national pride and in convincing the Chinese of the foreigners' selfish aggression in the name of justice.

⁵¹ The Shantung Question, etc., *op. cit.*, pp. 135-6.

heard before a panel of judges of whom a majority should be of foreign nationality. If it should be found that the Chinese authorities and the Chinese judges were disposed to give whole-hearted coöperation in this scheme, and satisfactory results were obtained, the participation of the foreign judges might be gradually lessened, until the Chinese judicial system would become fully freed from all extraterritorial elements.⁵²

Dr. M. T. Tyau, a Chinese authority, proposes the abolition of extraterritoriality in three stages: the first stage to be spent in the reorganization or institution of "mixed" tribunals with the cooperation and assistance of the treaty states; the second stage to involve the abolition of the consular courts; and the final stage to restore to China complete jurisdiction over foreign residents in China. In elaboration of his proposal he says:

In justice to the Chinese, the Treaty Powers who have already signified their willingness to assist them in their judicial reforms should, in the first place, do more than utter the mere promise to assist. As a policy of expediency, as well as of statesmanship, a new agreement may be entered into for this precise object, and assuredly the multitudinous interests involved are sufficiently important to warrant the conclusion of a special convention. On the other hand, the Chinese should welcome the participation of foreign lawyers in the administration of their new courts, especially in those which try cases between foreigners and Chinese. Since it will take five years, at least, to complete the codification of civil and commercial laws, such a treaty might provide that the Powers will surrender a portion of their extraterritorial rights upon the promulgation of all the new codes. These codes will require experimenting with for a few years; therefore, the Powers may promise to relinquish a further portion of their extraterritorial privileges, say, five years from the date of promulgation of the latest code. At the end of ten years of cooperation between the two sides it is conceivable that no mean progress will have already been made; wherefore, the relinquishment of the final trace of extraterritorial rights might be arranged to take place as soon as China can show that she is reasonably able to accord both protection and justice to foreigners in her territory, this period to be probationary, say from two to five years, depending upon the success of China's cumulative efforts.

With the gradual abolition of extraterritoriality, the convention should also provide for the reorganization of existing, or the institution of new, mixed tribunals, as part and parcel of the scheme of judicial reform. A start in this direction may be agreed to be made in large treaty ports, that is, in cities which already possess a mixed population of Chinese and foreigners, where the effect of foreign participation will be at once felt, and where the proposed reform will have perhaps the best baptism of probation.

In regard to the element of foreign participation it does not appear to be wise to stipulate beforehand how the foreign judges should be nominated, but their appointment should be left entirely to the Chinese. On the other hand, the Chinese Government should offer to employ the best foreigners available for the purpose, whether in or out of China, and irrespective of nationality. To ensure that such foreign participa-

⁵² Willoughby, *op cit.*, pp. 79-80.

tion is not mere make-believe, the Chinese will be well advised to engage foreign lawyers not only as judges, but also as procurators, and their powers should not be merely advisory or consultative. In this way the necessary confidence will be inspired among all parties.⁵³

An analysis of the aforementioned schemes discloses certain practical difficulties: In the first place, the official Chinese proposal places excessive confidence in the remedial efficacy of new legal codes and in the mere establishment of new Chinese courts. Although humane and scientific codes, and properly organized tribunals, are indispensable instruments, and are generally given first consideration in the institution of a modern judicial system, they do not constitute convincing proof or a guarantee that all judicial shortcomings and abuses of the past will automatically disappear. What China most urgently needs are competent administrators of the law. The ridiculous treatment meted out to Russian subjects in Manchuria, particularly in Harbin, after the suspension of their extraterritorial rights by the Chinese Government in September, 1920, leads one to question China's readiness to enforce her laws justly without qualified judges.⁵⁴ The immediate rectification of this deficiency is most pressing⁵⁵ in view of the fact that thousands of Russians, Germans and former subjects of the defunct state of Austria-Hungary, living in China, are now under Chinese jurisdiction.

Both Professor Willoughby and Dr. Tyau recognized the primary and immediate need of a rehabilitated Chinese judicial system. It is the efficient administration of the law that has the greatest bearing upon the abolition of extraterritoriality. And that cannot be better initiated than by the appointment by China of foreigners "learned in the law and experienced in administration" as judges and procurators. If China is really anxious to put an end to the present system of judicial incumbrances, this sort of foreign participation is undeniably essential. There is no implication, however, that native Chinese talents alone are not capable of bringing about the desired change. But such an arrangement, if followed, may mean slow and uncertain development in the administration of the law and, therefore, retard the early realization of China's ardent wish. Under a plan of foreign guidance and tutelage the native judges will benefit from the training and experience of their foreign colleagues. It will also have the tendency to induce the treaty states to accede to China's wishes when once they feel that their interests are adequately protected.

However, foreign participation in the form suggested by Professor Willoughby raises at once a delicate question. Shall China have a free hand in

⁵³ "Extraterritoriality in China and the Question of its Abolition," *The British Year Book of International Law*, 1921-22, pp. 143-5.

⁵⁴ See articles by Rodney Gilbert on "Russians under Chinese Jurisdiction" in the *North China Herald* of April 16 and 23, 1921.

⁵⁵ Many Chinese lawyers, graduates of law colleges in the West, are practicing before the foreign and mixed courts at Shanghai in preparation for service in the new Chinese courts.

the choice of foreigners as Chinese judges and procurators? It is only reasonable that China should exercise the right of appointment. The restriction that the appointment of judges shall be by "the nomination of, or at least with the approval of, the foreign offices of the Treaty Powers"⁵⁶ seems, however, unwise; for the distribution of Chinese judgeships among the qualified foreigners of the various nationalities, in view of past experience, may involve China in a struggle for national advantages by the treaty states among themselves to the detriment of judicial reforms. There is also the possibility that extraneous issues may be injected by the latter. China should be given full discretion in the matter, the treaty states relying upon her to appoint, as she has done in the selection of foreign legal experts for the preparation of her codes, qualified foreigners available for the Chinese bench.

In regard to the establishment of truly "mixed" tribunals for the trial of cases in which foreigners are parties either as defendants or plaintiffs, that is *prima facie* necessary and urgent. The system of "mixed" courts has not received the attention which it deserves. But in view of the fact that there are already in existence three grades of new courts in most of the Chinese provinces, there is little justification in establishing a separate system for "mixed" cases. The District Courts, as courts of first instance for native cases, should be utilized for the trial also of "mixed" cases, but with at least one foreign Chinese judge sitting with his native Chinese colleagues. Then, as Professor Willoughby further suggested, "in those cases in which the judgments rendered are not approved by the foreign judge, a right of appeal should lie to a superior court and the cases heard before a panel of judges of whom a majority should be of foreign nationality." Again, there is no good reason why the high court of the province should not constitute such a court. And further appeal, if necessary, should be allowed to be carried to the highest tribunal in the land, the Taliyuan or Supreme Court.⁵⁷ In brief, the system of "mixed" courts should form an integral part of China's national judicial organization. Under this arrangement foreigners would have the full benefit of Chinese law.

As to what constitutes a reasonable time in which China may hope to recover her judicial sovereignty, the immediate answer is that it will depend largely on herself. It has been advocated that a definite period be set and agreed upon, but there is no practicable basis upon which this can be determined. It is entirely problematical as to when the native Chinese judges will command confidence and respect, especially in view of the transitory changes now taking place and likely to continue in China for some years to come. The problem of setting a definite time limit is quite different from

⁵⁶ Willoughby, *op. cit.*, p. 80.

⁵⁷ As a court of last resort for "mixed" cases it is uncertain whether the appeals should be heard before a bench composed of both foreign and native Chinese judges. As an experiment, however, it seems desirable to allow the latter to adjudicate them, with the former acting as legal advisers on points of procedure.

that of adopting a complete set of legal codes and instituting new judicial machinery. Hence it is impossible, even though desirable, to come to any just conclusion as to how soon and when China should be free from the present extraterritorial régime.⁵⁸

China, too, is not blind to the difficulties of arriving at an equitable determination of this question. In phrasing her latest request for the withdrawal of extraterritorial jurisdiction at the Washington Conference, China asked that it be carried out "as soon as circumstances would permit," and invited the Powers "to coöperate with her in taking initial steps toward improving and eventually abolishing the existing system."

Under existing conditions, and in the light of past practices, it is desirable that the mutual rights and obligations assumed by China and the treaty states in any plan for the gradual abolition of extraterritoriality should be clearly stated in a treaty or convention. Such an international agreement would give further encouragement to the Chinese reforms, and the promises of the treaty states would not become meaningless words, but definite undertakings of future action.

There is, however, a serious obstacle in the way of making such an international agreement an instrument of practical value. Unanimity would be required to put it into force, and there are today at least fourteen states holding extraterritorial rights in China. Will China succeed in obtaining the unanimous consent of the treaty states to the document without some sort of *quid pro quo*?⁵⁹

In lieu of unanimity of agreement to make the instrument operative a substitute expedient of partial consent would seem to be necessary. The approval of the major treaty states, such as the United States, France, Great Britain and Japan should suffice to give it immediate effect. By reason of their larger interests in China, they must of necessity be accorded exceptional treatment. The proposed arrangement does not in any way imply the exclusion of the lesser treaty states from effective voice in the adoption of the agreement. The purpose is that, if for reasons of their own making the lesser states refuse or unnecessarily delay the operation of the agreement, they should not be allowed to defeat its purpose.

To sum up, it would seem that the following principles should govern the disposition of the abolition of extraterritorial jurisdiction in China: (1) the adoption by China of the necessary legal codes, to wit, a civil, a criminal, and a commercial code, a code of civil procedure and a code of criminal procedure; (2) the reorganization of the existing Chinese courts, particularly in localities

⁵⁸ The shortness of time in which China fulfilled her part of the Sino-British Opium Suppression Agreement of 1908 has been used as a favorite argument in favor of setting similarly a definite date for the abolition of extraterritoriality. However, opium suppression does not involve a constructive program and the task is quite different in nature.

⁵⁹ Sweden agreed in 1908 that she will be prepared to relinquish her extraterritorial rights as soon as all other treaty states have agreed to do the same.

where there are treaty ports; (3) the establishment of "mixed" courts as an integral part of the regular judicial system, conferring upon foreigners the full benefit of Chinese laws; (4) the appointment as Chinese judges and procurators of foreigners learned in the law and experienced in administration irrespective of nationality, and at the unfettered discretion of the Chinese Government; (5) the provision for gradual and progressive relinquishment of extraterritorial rights by the treaty states corresponding to the ascertained fitness of the Chinese judiciary to exercise jurisdiction over foreigners; and (6) the conclusion of an international agreement embodying the solemn promise of the treaty states to surrender their extraterritorial rights immediately upon the fulfillment by the Chinese judiciary of certain elemental and progressive tests of judicial proficiency, the agreement to come into force upon ratification of the major treaty states on the one hand, and China on the other.⁶⁰

Guided by these principles, and with the sympathetic and active coöperation of the treaty states, China should encounter no serious impediments in the recovery of her jurisdictional rights. It is much to be regretted, however that she is still passing through a state of political unsteadiness. With the country under the control of irresponsible militarists, who owe but nominal obedience to an impotent central government, China cannot be said to be in an encouraging condition for judicial experiments contemplated in any scheme to do away with extraterritoriality. Supremacy of the law must, above all, be upheld and respected. While constructive judicial reforms are urgent in order that the abolition of extraterritoriality may be hastened, it is equally, if not more, pressing and indispensable that the authority of the central government shall first be reestablished throughout the land.

⁶⁰ See editorial comment by Mr. C. C. Hyde in this JOURNAL, Vol. XVI, No. 1, pp. 70-4, for an interesting discussion of the protection of foreign interests involved in the restoration to China of her jurisdictional sovereignty.

THE SETTLEMENT OF LAUSANNE

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On August 6, 1924, nearly six years after the Armistice of Mudros, the state of war which had existed in the Near East since 1914 was terminated as between Turkey, on the one hand, and the British Empire, Italy and Japan, on the other hand, by the drawing up of the first *procès-verbal* of the deposit at Paris of the ratifications of the settlement concluded at Lausanne on July 24, 1923. The state of war between Greece and Turkey had already been terminated a year ago, pursuant to the settlement of Lausanne; and under the terms of the same settlement the Allied forces of occupation had been withdrawn from Turkish territory; the prisoners of war and interned civilians detained by Greece and Turkey, respectively, had been mutually restored; the compulsory exchange of certain portions of the Greek and Turkish populations had been effected; and a general amnesty for political offenders had been declared. The portions of the settlement brought into force by the recent ratifications are the Treaty of Peace, the Straits Convention, the Commercial Convention and the Convention respecting Jurisdiction and the Conditions of Residence and Business. Certain instruments which did not require ratification, including the Declarations relating to Sanitary Matters and to the Administration of Justice and the Protocol and Declaration relating to Concessions, may now also be expected to be given practical effect.¹

The settlement between the Allied Powers and Turkey differs from the other settlements following the World War chiefly in the fact that, in addition to disposing of the questions normally incident to the restoration of peace between belligerent nations, it was necessary at Lausanne to draw up and incorporate in numerous instruments detailed provisions for the substitution of the régime of generally recognized international law for the capitulatory régime which has prevailed in Turkey for some hundreds of years. Other provisions which impart to the settlement its peculiar character and significance are those which relate to the safeguarding of the minorities, the disposition of pre-war concessions, the regulation of the navigation and passage of the Straits, and the reparation of war damages.

THE CAPITULATIONS

The judicial and fiscal privileges granted to foreigners by the first Sultans at Constantinople were doubtless regarded by their grantors as voluntary

¹The documents embodying the settlement of Lausanne were printed in the SUPPLEMENTS of the JOURNAL for January and April, 1924.

and spontaneous concessions which could be withdrawn at the imperial pleasure. The Sultan's unilateral denunciation of the capitulations, in 1914, in so far as his action was not based on purely practical considerations, appears to have been made upon the theory that those early concessions, though later embodied in treaties and confirmed by long usage, were still essentially of a revocable character. This theory was of course instantly repudiated by all the Capitulatory Powers—including even Germany and Austria-Hungary, with whom Turkey was shortly to be allied. It was again advanced by the Turkish representatives at Lausanne, but it was reinforced there by arguments which showed some disposition to meet the Capitulatory Powers on their own ground.

Admitting for the purposes of the argument that the capitulations were bilateral agreements—synallagmatic, as they have been called, the Turkish representatives at Lausanne contended that Turkey had nevertheless the right to terminate the capitulations unilaterally, as being prejudicial to her political and economic existence, inconsistent with altered conditions in the country, and incompatible with generally recognized international law.

The Allied representatives at Lausanne were convinced of the necessity and the propriety of a revision of the capitulations with a view to obviating prejudice to the political and economic welfare of Turkey and adapting them to conditions in the country, in so far as those conditions had been altered in material respects since the capitulatory régime was instituted. They were not at all troubled, however, by the fact that the capitulations were incompatible with generally recognized international law. The régime of the capitulations was generally regarded by them as constituting a necessary exception to the rule of exclusive territorial jurisdiction prevailing in countries whose laws and administrations were modeled upon Western ideas. The only questions which they believed to be arguable were the nature and extent of the capitulatory provisions which it would be necessary to continue in force, at least for a transitional period.

Every one knows how the argument ended. The Turks adhered to the declaration in their National Pact of January 28, 1920, opposing restrictions inimical to the national development in political, judicial, financial and other matters,² and the exceptions to the régime of generally recognized international law were reduced to a minimum. It is worth noting that the formula finally agreed upon regarding the termination of the capitulations³ is consistent both with the view of the Turks that the capitulatory system was legally terminated in 1914 and with the view of the Allies that it continued to be binding in law until the coming into force of the Treaty of Peace.

² See the English translation of the National Pact from the Turkish text in Toynbee, *The Western Question in Greece and Turkey*, pp. 209-210.

³ In Article 28 of the Treaty of Peace "the High Contracting Parties declare that they accept, each in so far as it is concerned, the complete abolition of the Capitulations in Turkey from every point of view."

The system which now replaces that of the capitulations in Turkey is, in the words of the preamble of the Treaty of Peace, "based on respect for the independence and sovereignty of States." The Convention respecting Jurisdiction and the Conditions of Residence and Business provides that in Turkey, upon condition of complete reciprocity, the nationals of the other contracting parties shall be received and treated, as regards their persons and their property, in accordance with ordinary international law. The remainder of the convention is hardly more than an amplification of this provision, except that, still subject to reciprocity, Allied nationals in Turkey are accorded equality with Turkish nationals as regards taxes and other fiscal matters, and that, without the condition of reciprocity, the non-Moslem nationals of the Allied Powers in Turkey are accorded the right to apply to courts in their own countries for the adjudication of matters involving their personal status or domestic relations or the succession to and the distribution and liquidation of personal property.

The explanation of the exception just noted as regards jurisdiction is not far to seek. Questions involving the personal status and domestic relations of Moslems have always been decided in accordance with the Mohammedan Sacred Law, just as similar questions affecting the Christian subjects of Turkey have been decided by the ecclesiastical authorities of the Christian communities in accordance with the laws and customs of those communities. The Turks, recognizing the peculiarity of the Western system of law under which such questions are referred to the civil courts, had no difficulty in agreeing to the proposal that foreigners be permitted to carry such questions to the courts of their own countries. The Turkish opposition to allowing jurisdiction in matters of personal status and domestic relations to the foreign consuls in Turkey was presumably due to an apprehension that judicial powers once conceded might be inordinately extended.

In regard to judicial matters other than those above indicated, Allied nationals in Turkey are to be amenable to the Turkish tribunals, through which, according to the Declaration of the Turkish delegation regarding the Administration of Justice, the Government of the Grand National Assembly (now the Republic of Turkey) is in a position to assure to foreigners "all the safeguards of a good judicial system." Foreign opinion may be less inclined to agree with this statement than to approve that which follows, to the effect that the Turkish Government is "prepared to have an investigation made and to cause the situation to be studied with a view to the institution of such reforms as may be rendered advisable by the development of manners and civilization." Apprehensions on this score may, at any rate, be allayed to some extent by the announced intention of the Turkish Government to take immediately into its service for not less than five years a number of European legal advisers whose duties will be to participate in the work of legislative commissions; to observe and report to the Minister of Justice on the functioning of the Turkish civil, commercial and criminal

courts; and to receive complaints growing out of the administration of justice, the execution of sentences, or the application of the laws, and out of domiciliary visits, searches, and arrests. It should be noted in this relation that, as the sittings of the Turkish courts are usually open to the public, there will apparently be nothing to prevent the attendance of consuls at judicial proceedings which concern their nationals. Further reassurance may be conveyed by the declaration of the Turkish delegation that in cases of minor offenses release on bail shall always be ordered unless it entails danger to the public safety or impedes the investigation of the cases. Finally, there appear to be great possibilities in the undertaking that all arbitral decisions in civil or commercial matters shall be executed upon being signed by the president of a court of first instance, "who shall not refuse his signature unless the decision should be contrary to public order."

Two phases of the capitulations which remain to be mentioned relate to the customs régime and the sanitary administration. As regards the first of these it appears to be sufficient to state that, under the Commercial Convention, the former system under which the Turkish customs duties were limited to a uniform rate of 11 per cent. *ad valorem* is replaced by a provision that for a period of five years the duties shall be those fixed in the Turkish specific tariff which came into operation, without the consent of the Capitulatory Powers, on September 1, 1916; it being agreed that the payments in Turkish paper money shall be adjusted from time to time according to the variations in the rate of exchange.

The sanitary administration, which was formerly controlled by a Council of Health on which each of the Capitulatory Powers was represented, is abolished by Article 114 of the Treaty of Peace, by which the Turkish authorities are entrusted with the sanitary organization of the coasts and frontiers of Turkey. Under Article 115 a single sanitary tariff is to be applied to all ships without distinction between the Turkish flag and foreign flags and to nationals of foreign Powers in the same conditions as to nationals of Turkey. All questions relating to the pensioning of the former employees of the Council of Health, to the employment of the reserve funds of the Council and to the final liquidation of the former sanitary administration are, under Article 116, to be regulated by a commission *ad hoc* on which all the Powers formerly represented on the Council, with the exception of Germany, Austria and Hungary, have the right to be represented.

MINORITIES

The portion of the Turkish peace settlement which, next to that regarding the capitulations, has most deeply interested American public opinion is that which relates to the protection of the minorities. The proposal that Turkey set aside a portion of her territory as a national home for the Armenians having failed, it became a matter of the highest importance from the humanitarian standpoint that liberal provisions be made regarding the

treatment of the Armenians and other non-Moslem nationals of Turkey remaining within the frontiers of the country as determined by the Treaty of Peace. In this regard the attitude of the Turkish delegation at Lausanne and the provisions there agreed upon were based upon the following declaration in the fifth article of the National Pact of January 28, 1920:⁴

The rights of minorities as defined in the treaties concluded between the Entente Powers and their enemies and certain of their associates shall be confirmed and assured by us—in reliance on the belief that the Moslem minorities in neighboring countries also will have the benefit of the same rights.

The treaties referred to in this article of the National Pact doubtless belong to the group of treaties concerning minorities signed by Czechoslovakia, Poland, Roumania, the Serb-Croat-Slovene State and Greece.⁵ The last of these treaties, it should be noted, having been signed at Sèvres on August 10, 1920, was confirmed by Greece and the Principal Allied Powers in a protocol signed at Lausanne on July 24, 1923. The articles of the Treaty of Lausanne relating to minorities (Articles 37 to 45) reproduce, with the necessary modifications, the provisions incorporated in the treaties mentioned above. The Turks refused to agree to the insertion of provisions, such as those which appeared in Articles 142 and 144 of the Treaty of Peace signed at Sèvres, with a view to repairing the wrongs inflicted on members of the minorities in the course of the massacres perpetrated in Turkey during the war.

In the Treaty of Lausanne the Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race, or religion, and to adopt measures permitting the settlement of questions of personal status and domestic relations affecting the non-Moslem minorities in accordance with their own customs. Turkey also agrees that Turkish nationals belonging to the non-Moslem minorities shall enjoy the same civil and political rights as Moslems and shall have an equal right to establish, manage and control charitable, religious, social and educational institutions at their own expense and with the right to use their own language and exercise their own religion freely therein.

Turkey undertakes that the stipulations in favor of the minorities shall be recognized as fundamental laws not subject to variation or interference by or under any law, regulation or official action. She further agrees that, in so far as they affect the non-Moslem nationals of Turkey, these stipulations constitute obligations of international concern and shall be placed under the guarantee of the League of Nations; that any member of the Council of the League shall have the right to bring to the attention of the Council, for such action as that body may deem proper and effective, any infraction

⁴ See Toynbee, *op. cit.*, p. 210.

⁵ Toynbee, *op. cit.*, p. 323.

or danger of infraction of these obligations; and that any difference of opinion as to questions of law or fact, arising out of the articles concerning the minorities, between the Turkish Government and any one of the other signatory Powers, or any other Power which is a member of the Council, shall be held to be a dispute of an international character which may, upon the demand of the other party, be referred for final decision to the Permanent Court of International Justice.

The last of the articles relating to minorities provides that the rights conferred by the foregoing stipulations on the non-Moslem minorities of Turkey shall be similarly conferred by Greece on the Moslem minority in her territory. It is possible that this provision may, through the manner of its application by Greece, operate as a guarantee no less effective than that of the League of Nations.

CONCESSIONS

The principal results of the protracted negotiations at Lausanne on the subject of concessions were embodied in a protocol signed by the British Empire, France, Italy, Greece, Roumania, and Turkey, and adhered to by Belgium. By the terms of this protocol concessionary contracts and subsequent agreements relating thereto, duly entered into before October 29, 1914, between the Ottoman Government or any local authority, on the one hand, and nationals of the contracting Powers other than Turkey, on the other hand, are maintained. These contracts and agreements are, however, to be brought into conformity with the new economic conditions, and if within one year from the coming into force of the Treaty of Peace the parties have not agreed upon a settlement of accounts and a readaptation of the concessions, they will adopt the recommendations of experts selected for the purpose. The states acquiring the territories detached from Turkey under the Treaty of Peace are to assume, by subrogation, the rights and obligations of Turkey towards the nationals of the other contracting parties under concessionary contracts or agreements affecting the detached territories.

The protocol contains special provisions in regard to further negotiations concerning the concessions claimed by one French company and two British companies. The Turkish Petroleum Company, whose claim to a concession has been contested by the United States in a diplomatic correspondence with the British Empire extending over four years, is not mentioned in the protocol nor in any other instrument in connection with the peace settlement. This claim was, however, made the subject of a reservation by the British delegation at the final session of the Economic Committee of the Conference.⁶

The protocol regarding concessions is important chiefly as embodying the principle of the readaptation of concessions granted by a government before the outbreak of war and regarded as suspended during the war. The omis-

⁶ *Recueil des Actes de la Conférence, Deuxième Série, Tome I*, pp. 378, 379.

sion of reference to the concession claimed by the Turkish Petroleum Company is significant not only by reason of the incomplete and inchoate character of the concession claimed, but also by reason of the extensive scope of the privileges of exploitation which would have been established under this concession, both against Turkey and, by subrogation, against the new State of Iraq.

THE STRAITS

The fourth article of the Turkish National Pact reads as follows:⁷

The security of the city of Constantinople, which is the seat of the Caliphate of Islam, the capital of the Sultanate, and the headquarters of the Ottoman Government, and of the Sea of Marmora must be protected from every danger. Provided this principle is maintained, whatever decision may be arrived at jointly by us and all other Governments concerned, regarding the opening of the Bosphorus to the commerce and traffic of the world, is valid.

The attitude of the Turkish delegation, pursuant to this article, was cited by Ismet Pasha, just before the break in the negotiations in February, 1923, as evidence of his disposition to conciliate the Allies in every possible way. He said:⁸

We have abandoned the principle of the closing of the Straits, a principle which, as has been proved by past experience, is historically that which most adequately secures the safety of our capital, and we have agreed that the waters of the Straits shall be open to the ships of all nations. Further, in spite of the fact that in many cases where both shores of an open waterway belong to a single Power, that Power retains by usage the right of fortification, we have agreed in the present instance to demilitarization.

We have also abandoned our request regarding the maintenance of a garrison in the Gallipoli peninsula.

Irrespective of the bearing of the attitude of the Turkish delegation regarding the Straits on the question of their disposition to conciliate the Allies, it appears that Turkey, in consenting to the convenient régime which was adopted for securing the freedom of the Straits, did in fact render the security of her former capital largely dependent upon the good faith of the Allies and the efficacy of the measures which may be recommended by the Council of the League of Nations. The principal provisions of this régime may be indicated briefly.

Merchant vessels, including hospital ships, yachts and fishing vessels, and non-military aircraft, are in time of peace, and also in time of war if Turkey is neutral, to be allowed free navigation and passage of the Straits without formalities and without charges except for services rendered. In

⁷ Toynbee, *op. cit.*, p. 210.

⁸ Turkey No. 1 (1923), Lausanne Conference on Near Eastern Affairs 1922-1923, Cmd. 1814, p. 838.

time of war when Turkey is a belligerent, neutral merchant vessels and non-military aircraft not assisting the enemy are to be accorded the same freedom of navigation and passage as in time of peace, subject to the exercise by Turkey of the right of visit and search and of other rights under international law. Turkey will be free, when she is a belligerent, to take measures to prevent the use of the Straits by enemy vessels, but such measures must not be of a nature to prevent the free passage of neutral merchant vessels and Turkey must provide the necessary instructions or pilots for such vessels.

Warships, including fleet auxiliaries, troopships, aircraft carriers, and military aircraft, are in time of peace to be accorded the same privileges as merchant vessels, subject to the restriction that the maximum force sent by any one Power into the Black Sea must not exceed that of the most powerful fleet of the littoral Powers of the Black Sea, actually in the Black Sea and in active commission; provided, however, that the Powers reserve the right to send into the Black Sea at any time a force of not more than three ships, none of which shall exceed ten thousand tons. In time of war, when Turkey is neutral, the same rules are to apply to the navigation and passage of warships as in time of peace, except that the limitations imposed cannot be allowed to prejudice the exercise of belligerent rights in the Black Sea. Turkey, on the one hand, cannot as a neutral take measures which are likely to interfere with navigation through the Straits, and, on the other hand, no hostile act can be committed in the Straits. In time of war, when Turkey is belligerent, neutral warships are to be accorded the same rights as in time of peace, but they will enter the Straits at their own risk and must submit to investigation as to their character. The measures taken by Turkey to prevent enemy ships and aircraft from using the Straits must not be of such a nature as to prevent the free passage of neutral ships, and Turkey must provide the necessary instructions or pilots.

The Zone of the Straits as defined in the commission is to be demilitarized. Within this zone, except for a garrison of 12,000 men, as arsenal, and a naval base at Constantinople, there are to be in time of peace no fortifications, no permanent artillery organization, no submarine engines of war other than submarine vessels, no military aerial organization, no naval base, and no armed forces other than the police and gendarmerie necessary for the maintenance of order. Turkey will, however, retain the right to transport her armed forces through the demilitarized zone, and the Turkish fleet will have the right to anchor in the Turkish territorial waters within the zone. It is, moreover, contemplated that in case of war, Turkey or Greece, in pursuance of belligerent rights, may modify the provisions of demilitarization; in such case the régime laid down in the convention is to be reestablished upon the conclusion of peace.

The observance of the provisions relating to the passage of warships and military aircraft is to be assured by an International Straits Commission to be established at Constantinople under the auspices of the League of

Nations, with a membership including a representative of Turkey, as chairman, and representatives of France, the British Empire, Italy, Japan, Bulgaria, Roumania, Russia and the Serb-Croat-Slovene State, and also a representative of the United States if this country adheres to the convention.

If the freedom of navigation or the security of the demilitarized zone be imperiled by a violation of the provisions concerning the freedom of passage, or by surprise attack or act or threat of war, the contracting parties and, in any case, France, Great Britain, Italy and Japan, without prejudice to their rights and obligations under the Covenant of the League of Nations, are to meet such violation, attack, or act or threat of war by all the means that the Council of the League of Nations may decide upon for the purpose.

REPARATIONS

In the Treaty of Peace signed at Sèvres on August 10, 1920, the Allied Powers, recognizing that the resources of Turkey, after the territorial rearrangements provided for in the treaty, were "not sufficient to enable her to make complete reparation" and "desiring to afford some measure of relief and assistance to her" (Article 231), agreed that all the resources of Turkey, except revenues conceded or hypothecated to the Ottoman Public Debt, should be placed at the disposal of a financial commission to be designated by the Allies and that, due regard being had to the financial condition of Turkey and the necessity for providing for the essential expenses of its administration, these resources, after the payment of the salaries and current expenses of the commission and the ordinary expenses of the Allied forces of occupation to be maintained in Turkish territory after the coming into force of the treaty, should be applied, as need might arise, first to the payment of the expenses of the Allied forces of occupation since October 30, 1918, and, secondly, to the payment of indemnities on account of the claims of the Allied Powers for the losses suffered by their nationals during the war (Article 236). Among the resources to be placed at the disposal of the Financial Commission were mentioned (in Article 253) the sums in gold which were to be transferred by Germany and Austria under the provisions of Article 259 (1), (2), (4) and (7) of the Treaty of Versailles and Article 210 (1) of the Treaty of St. Germain.

In the Treaty of Lausanne (Article 58) Turkey and the other contracting Powers, except Greece, reciprocally renounce all pecuniary claims for the loss and damage suffered by them and their respective nationals as the result of acts of war or measures of requisition, sequestration, disposal, or confiscation between August 1, 1914, and the coming into force of the Treaty of Peace. Turkey renounces in favor of the other contracting parties, except Greece, any right to the sums in gold, approximately twenty-five million dollars, transferred by Germany and Austria under Article 259 (1) of the Treaty of Versailles and Article 210 (1) of the Treaty of St. Germain. Turkey also renounces all claim to the repayment of the sums, approximately

twenty-five million dollars, paid for the warships ordered in England by the Ottoman Government before the war and requisitioned by the British Government in 1914. As between Turkey and Greece the question of reparations is disposed of by the provision, in Article 59, that Greece recognizes her obligation to indemnify Turkey but that Turkey, in view of the financial condition of Greece, relinquishes her claim. There is nothing in the Treaty of Lausanne to indicate that the Allies ever proposed to take over the entire resources of Turkey for an indefinite period and apply them to the payment of reparations.

When the question of reparations came up for discussion at Lausanne, Ismet Pasha announced that the Turkish delegation stood ready to compare the respective amounts of damage suffered by Turkey and the Allies and to pay any balance which might be shown against Turkey. He intimated, however, that in the opinion of the Turkish delegation the devastations wrought by the Greek armies in Turkey might be found, upon investigation, to be more than sufficient to wipe out any claim of the Allies on account of reparations.⁹ The final agreement under which fifty million dollars were made available for the reparation of the war losses suffered by the nationals of the Allied Powers other than Greece was without doubt due less to a deliberate striking of a balance between Allied and Turkish claims than to the fortuitous circumstance that the sums released by Turkey were already in the hands of the Allies.

The moderation of the provisions in the Treaty of Lausanne on the subject of reparations, as contrasted with the provisions in the Treaty of Sèvres on the same subject, is as significant as it is striking. This moderation may have been due in part to a genuine conversion of the Allies to the belief that the earlier treaty was not wholly fair to the Turks. A more important element in the explanation was undoubtedly the fact that between the dates of the Armistices of Mudros and Mudania Turkey had ceased to be a suppliant for peace at the hands of the Allies and had become, not only a victor over Greece, but an adversary prepared to oppose the Allies by force of arms rather than submit to more than a certain maximum of sacrifices which had been indicated in the National Pact.

GENERAL OBSERVATIONS

The moderation noted in the provisions regarding reparations is equally present, though less striking, in the other provisions of the settlement of Lausanne. That it was in fact moderation, and not surrender to Turkish demands, is indicated not only by the liberality of the régime established regarding the Straits and by the substantial character of the safeguards provided for the non-Moslem minorities and for foreigners residing in Turkey, but also by the fact, which is sometimes overlooked, that by the terms of the settlement Turkey loses the major portion of the territory of the

⁹ Turkey No. 1 (1923), Cmd. 1814, p. 625.

former Ottoman Empire. The Turkish delegates had, on the whole, good reason to be pleased with what they accomplished at Lausanne, but their success was due as much to the thoroughness of their preparation and to the single-mindedness of their devotion to the principles consecrated in the National Pact as it was to the realization of the Allies that Turkish armies were ready to renew fighting at a moment's notice and that public opinion in the Allied countries would not countenance further sacrifices of men and money for the enforcement of the maximum demands made upon Turkey.

At the concluding session of the Conference of Lausanne Ismet Pasha expressed his gratification at the happy issue of the negotiations, which, he said, had been "conducted on a footing of equality." The Turkish plenipotentiaries, he continued, had not failed to point out on every occasion that their country was worthy of the full and complete independence enjoyed by all civilized countries. They were going to sign the Treaty of Peace in the belief that it was based upon the recognition of the equality and independence of Turkey and they were determined to apply its provisions loyally.

With the Treaty of Peace and the other parts of the settlement duly brought into force, Turkey will now have the opportunity to make good the assurances which she gave in return for her emancipation. In view of the novelty and difficulty of the tasks with which she is confronted, especially since the proclamation of the Republic and the abolition of the Caliphate, it will probably be necessary for some time to come to judge her more by her evident intentions than by her accomplishments. During this time there will no doubt be frequent occasions for the invocation of the good offices of the Ministry of Foreign Affairs for the adjustment of difficulties arising in connection with administrative acts or judicial decisions. It is to be hoped that these occasions will steadily decrease in frequency, and that Turkey will soon succeed in proving to the satisfaction of all concerned her ability, as well as her desire, to fulfil all the obligations incumbent upon her under that régime of international law which she urged at Lausanne as the only proper basis for the regulation of her dealings with foreign Powers and their nationals.

THE LONDON CONFERENCE ON THE APPLICATION OF THE DAWES PLAN¹

BY GEORGE A. FINCH

Managing Editor

The Dawes plan for recovering the reparation debt of Germany to the Allies under the Treaty of Versailles² was accepted by all of the interested parties at London on August 16, 1924, and certain agreements necessary to enable the plan to be brought into operation were drawn up and initialed. Formal signatures to them were attached on August 30th after the French Parliament had approved the work of the conference on August 24th and 26th, and the laws for carrying the plan into effect had been passed by the German Reichstag on August 29th. The process of putting the plan into operation was thereupon promptly started. Immediately after the signatures had been attached on August 30th, the French Government issued instructions for the evacuation of a section of the Ruhr, and the Reparation Commission on the same day announced the appointment of the principal officials who are to administer the plan, namely, the Agent General for Reparation Payments, Mr. Owen D. Young of the United States, *ad interim* (the appointment of Mr. Seymour Parker Gilbert, formerly Assistant Secretary of the United States Treasury, as the permanent Agent General was announced September 4th); Trustee of the Railway Bonds, M. Delacroix of Belgium; Trustee of the Industrial Debentures, Signor Nogara of Italy; Commissioner of Controlled Revenue, Mr. Andrew McFadyean of Great Britain. Two days later, namely, on September 1st, the first instalment of twenty million (20,000,000) gold marks, due from Germany under the plan, was paid to the Agent General for Reparation Payments, and the second instalment was promptly paid ten days later. On September 4th, the restrictions placed upon the movement of persons, goods and vehicles between occupied and unoccupied Germany were removed, and four days later the eastern customs line between the same territories was abolished. On September 10th, the first of the Ruhr political prisoners were set at liberty.

Negotiations lasting exactly one month were required to reach the agreements for putting the Dawes plan into operation. The London Conference opened on July 16th and the agreements were completed and ready for

¹ The official proceedings of the conference are not available at the time of writing this article. For the facts and information contained herein, use has been made of the *London Times* for July and August and the first half of September, especially the daily accounts of the conference published during its sessions.

² For a summary of the Dawes plan, see the article in our last issue, July, 1924, pp. 419-435.

signature on August 16th. In its organization and procedure the conference resembled in some respects the Conference at Versailles in 1919. It was divided into two stages, first, the discussions between the Allies, and secondly, the negotiations with the Germans. In the first stage, the Allied countries having a direct interest in reparation payments by Germany took part, namely, Belgium, British Empire (with the British Dominions and India represented by one delegate alternating on the panel system), France and Italy, who were represented by their Prime Ministers, Greece, Japan, Portugal, Rumania and the Serb-Croat-Slovene State, who were represented by their diplomatic envoys at London. The United States was represented by its ambassador at London, with especially limited powers, but he did not sign any of the agreements.

Mr. Ramsay MacDonald, the British Premier, was elected President; and Sir Maurice Hankey, Secretary-General. The program adopted was contained in a Franco-British memorandum of July 9th,³ and the topics on it were assigned to three committees to consider and report, respectively, upon first, the procedure of declaring Germany in default under the Dawes plan, and the measures to be taken in such event; second, a plan by which German economic and fiscal unity should be restored; third, methods of making transfers of payments and deliveries in kind from Germany to the creditor countries. A legal committee was later appointed to report upon the proper arrangements to be made with Germany for putting the Dawes report into operation without running counter to the Treaty of Versailles, and upon provisions for modifying the Dawes report, if necessary, and interpreting it after it became operative.

The work of the committees was finished and their reports approved on August 2nd,⁴ when an invitation was sent to Germany to attend the conference. The second stage began on August 5th, when the German delegation, headed by Chancellor Marx, arrived; but here the resemblance to the Versailles Conference disappeared. Mr. MacDonald informed the Germans that there was a common desire to attach signatures only after discussions in which every party had been fairly heard. He handed them copies of the committee reports previously agreed upon and invited them to submit comments in writing. After this was done, the German comments were classified and referred to the original committees of the conference, which were reconstituted with German members to deal with the German emendations. In summarizing the work of the conference at its closing session on August 16th Mr. MacDonald referred to this phase of it as follows:

³ Printed in British parliamentary paper, Misc. No. 12 (1924). For the correspondence concerning a previous program which met with vigorous opposition in France, see Misc. No. 10 (1924).

⁴ The text of the reports of the First and Third Committees is printed in the *London Times*, Aug. 4, 1924, p. 13. A summary of the report of the Second Committee is printed in the *Times*, July 29, p. 12. The text of two reports by the Committee of Jurists is printed in the *Times*, July 29, p. 14, and Aug. 4, p. 13.

I believe we have given Europe something better than an agreement drafted by lawyers and printed on paper—we all negotiated, discussed, put ourselves in each other's shoes. That is the greatest advance we have made, even when, in the end, one side or the other has been disappointed with the result. We are now offering the first really negotiated agreement since the war; every party here represented is morally bound to do its best to carry it out, because it is not the result of an ultimatum. We have tried to meet each other as far as the public opinion of the various countries would allow us. This agreement may be regarded as the first Peace Treaty, because we sign it with a feeling that we have turned our backs on the terrible years of war and war mentality.⁵

The conference had to deal with numerous questions, some of an intricate technical nature involved in the practical operation of the Dawes plan, which could be and were solved by the experts on the committees, and others of an important political character which could only be decided by the heads of government in council. In the Inter-Allied stage of the conference, the question of declaring a German default in the execution of the Dawes plan was the most difficult to solve. The British Government entered the conference in its antipathetic attitude toward the Reparation Commission, and seemed determined that the commission should not be vested with the power of declaring Germany in default under the Dawes plan, which it was argued exceeded the Peace Treaty provisions in the matter of deliveries in kind. France seemed equally determined to maintain the powers vested in the Reparation Commission by the Treaty of Versailles, seeking to keep the Dawes Committee within the position which it technically occupied, namely, that of a subordinate agency appointed by the Reparation Commission.

During the second stage of the conference, the overshadowing question was the military evacuation of the Ruhr. The German delegates naturally wished this to come about as soon as possible, and suggested six months as the maximum period during which evacuation should be accomplished. The British Government, although it did not take a formal part in these negotiations, informally made the military evacuation of the Ruhr a *sine que non* of her signature to the London agreements, and took the ground that military evacuation should take place concurrently with the economic evacuation. The French and Belgian Governments were disinclined to give up their hold on the Ruhr until the successful working of the Dawes plan had been demonstrated, and proposed two years as the maximum time within which their military forces should be withdrawn. In this connection, the French and Belgians also proposed that a few thousand of their nationals should be retained in the employ of the railways in the Ruhr for the security of their troops in the event of a German strike, and to be used as a nucleus in case reoccupation became necessary.

⁵ London Times, August 18, 1924, p. 16.

As will be seen in the following analysis of the agreements, the main questions in dispute were compromised. The Reparation Commission retains jurisdiction of the question of German defaults, but an American is to be added when the commission is considering any point relating to the Dawes report, and the provisions of the Treaty of Versailles are amended so as to provide for appeals to an arbitral commission from decisions of the commission upon German defaults either under the Treaty or the Dawes plan. The complete military evacuation of the Ruhr within one year was promised by France and Belgium, and they gave up their demand for the retention of employees on the German railways.

The documents embodying the arrangements of the conference at London consist of a protocol stating the general results, and four annexed agreements: (I) between the Reparation Commission and the German Government, containing their respective undertakings to put the Dawes plan into effect; (II) between the Allied Governments and the German Government, concerning Agreement No. I; (III) between the Allied Governments and Germany, enumerating the various steps to be taken on either side in order to put the plan into execution; (IV) an agreement between the Allies amending Annex II to the reparation clauses of the Treaty of Versailles.⁶

By Agreement No. I, which was signed on August 9th,⁷ the German Government undertakes to enact and enforce the laws and regulations required to carry out the recommendations of the Dawes plan, especially concerning the establishment of the bank of issue, the German railways, industrial debentures, and the control of the revenues assigned as security for the reparation annuities. On its part, the Reparation Commission agrees to take proper measures to facilitate the issue of the German loan required by the Dawes plan, and to make all financial adjustments necessary to give effect to the plan.

By Agreement No. II, the Allied Governments and Germany agree to submit to arbitration all disputes which may arise between the Reparation Commission and Germany with regard to the interpretation of Agreement No. I, the Dawes plan, or the German legislation enacted in execution of that plan. The arbitral body is to consist of three members appointed for five years, one by the Reparation Commission, one by the German Government, and the third by agreement between them, or, failing such agreement, by the President of the Permanent Court of International Justice. The agreement then deals with the functions of the Transfer Committee, and provides a system of arbitration for the settlement of disputes relating to this section of the Dawes report.

The Dawes plan provides that all reparation payments are to be deposited

⁶ The text of the protocol and agreements is printed in the *London Times*, Aug. 18, 1924, pp. 15-16. As soon as an official text is available, it will be printed in the SUPPLEMENT to the JOURNAL.

⁷ The other three agreements were initialed Aug. 16th and signed Aug. 30th.

in the bank of issue to the credit of the Agent for Reparation Payments, who may withdraw them only under the direction of the Transfer Committee, which is composed of an American, French, English, Italian and Belgian member, with the Agent for Reparation Payments as chairman. The Transfer Committee is empowered by the plan to apply the bank balances (a) to payments for deliveries in kind; (b) to convert them into foreign currencies for remission in accordance with the instructions of the Reparation Commission; and (c) to invest them under certain conditions in bonds or other loans in Germany.⁸

In this connection it should be noted that the Treaty of Versailles enumerates the products which may be demanded in kind and limits the period during which they are to be delivered. Under the treaty, coal and coke deliveries expire in 1930, and dyestuffs and chemicals in 1925. The Dawes Committee gave special attention to the question of deliveries in kind, which, it said, are not really distinguishable from cash payments in their financial effects. The committee recommended the continuance of such deliveries of the natural products of Germany and of exports which do not entail the previous importation into Germany of a large percentage of their value. If not carried too far, the Dawes Committee thought that such deliveries would create a greater export surplus by stimulating German productivity and keep the reparation transfer as large as possible.⁹

By London Agreement No. II, Germany recognizes the right of the Transfer Committee to employ reparation funds to make payments for deliveries in kind on customary commercial conditions of any commodities or service, regardless of the limitations fixed by the Treaty of Versailles either as to the nature of the products or the time of delivery. Provision is also made for continuing deliveries in kind of the products enumerated in the Treaty of Versailles after the fulfilment by Germany of her treaty obligations. It is stipulated, however, that the programs for both classes of deliveries shall be fixed with due regard to the possibilities of production in Germany, to the position of her supplies of raw materials and to her domestic requirements in so far as is necessary for the maintenance of her social and economic life and also with due regard to the limitations set out in the Experts' Report. Disputes as to these programs of deliveries will be referred to an arbitral commission of three members, appointed in advance for a definite period by agreement between the Reparation Commission, acting unanimously, and the German Government, or, in default of agreement, by the President of the Permanent Court of International Justice. The chairman of this commission is to be a citizen of the United States. The same commission is given power to consider and act upon complaints of wilful discrimination or obstruction on the part of the German Government or its nationals in the

⁸ Annex 6 to the Dawes Report, British parliamentary paper, Cmd. 2105, pp. 110-112.

⁹ Cmd. 2105, pp. 33 *et seq.*

matter of commercial contracts between the Allied Governments or their nationals and the German suppliers of deliveries in kind.

To determine the procedure of placing orders and the conditions for carrying out deliveries in kind, the London agreement constitutes a special committee of six, composed of three Allied representatives to be appointed by the Reparation Commission, and three members to be appointed by the German Government, with power to select a neutral additional member in the event of a difference. This special committee also has certain advisory functions in regard to facilitating deliveries in kind, limiting their anti-economic character, and recommending measures to enforce the prohibition of the Dawes report against the reexportation of such deliveries.

Article VI of Annex 6 to the Dawes report gives the Transfer Committee the power to transfer marks to private individuals for the purpose of making purchases of a permanent character in Germany from a schedule of property to be agreed upon between the Transfer Committee and the German Government. In arriving at such agreement, the report states that the German Government shall be required to have due regard to the necessity for making maximum payments to its creditors, but it shall also be entitled to have regard to maintaining control over its own internal economy. The London agreement provides that differences of opinion which may arise between the Transfer Committee and the German Government regarding the execution of this section shall be referred to an arbitrator to be chosen by agreement between the two parties, or, in default of agreement, to be nominated by the President of the Permanent Court of International Justice.

Article VIII of Annex 6 of the Dawes report provides that in the event of concerted financial maneuvers, either by the government or by any group, for the purpose of preventing transfers, the Transfer Committee may take such action as may be necessary to defeat such maneuvers. The London agreement provides that if the Transfer Committee is equally divided as to whether such concerted financial maneuvers have been set on foot, the question shall be referred to an independent and impartial arbitrator, selected by the Transfer Committee in agreement, or, in default of an agreement, by the President of the Permanent Court of International Justice. Majority decisions of the Transfer Committee taken under this article, and under Article X of the same Annex, which limits the accumulation of funds at the disposal of the Agent General for Reparation Payments, may be appealed by a member of the minority to an arbitral tribunal, consisting of three financial experts to be selected unanimously by the Transfer Committee, or, failing unanimity, by the President of the Permanent Court of International Justice. This tribunal is to include a citizen of the United States, who shall act as chairman.

London Agreement No. II provides finally that if any interested government, Allied or German, considers that a defect exists in the technical working of the Dawes plan which can be remedied without affecting substantially

the principles of the plan, it may submit the question to the Reparation Commission, and that body is required to take the advice of the Agent General for Reparation Payments, the Trustees for the Railway and Industrial Mortgage Bonds, the Railway and Bank Commissioners, and the Commissioner of Controlled Revenue, acting as a committee. If, after receiving the report or reports of this committee, the Reparation Commission arrives at a unanimous decision, which is accepted by the German Government, the necessary measures will be carried into effect without delay. If the Reparation Commission is not unanimous, or, if its unanimous decision is not accepted by the German Government, any of the interested parties may submit the question to a committee of three experts, chosen by agreement between the Reparation Commission deciding unanimously and the German Government, or, in default of such agreement, by the President of the Permanent Court of International Justice. The provisions of this paragraph do not cover any question in regard to the disposal of the funds paid to the account of the Agent General for Reparation Payments, or to any matter which falls solely within the competence of the Transfer Committee.

Agreement No. III of the London Conference provides that the Dawes plan will be considered as having been put into execution by Germany when certain measures have been taken as prescribed in the decision of the Reparation Commission of July 15, 1924,¹⁰ i.e., the voting and promulgation of the laws necessary to the working of the plan and the installation of the executive and controlling bodies provided by it; the constitution of the bank and railway company, the deposit with trustees of certificates representing the railway bonds and industrial debentures, and the conclusion of contracts assuring the subscription of the loan.

The agreement states that the fiscal and economic unity of Germany will be considered as having been restored, as required by the Dawes plan, when the Allied Governments have removed all vetoes on German fiscal and economic legislation imposed since the occupation of the Ruhr, reestablished the German authorities in the economic and fiscal administration of the territories then and since occupied, reformed the administration of the Rhineland territories to accord with the agreement of June 28, 1919, restored to their owners the industrial, agricultural, and other undertakings seized during the Ruhr occupation and withdrawn all special organizations established to exploit them, and removed all restrictions on the movement of persons, goods and vehicles, except as provided by the Rhineland agreement of June 28, 1919.

The following dates are specified in the agreement upon which the various steps are to be taken in order to bring the Dawes plan into full operation by October 5, 1924:¹¹

¹⁰ For the text of this decision, see the *London Times*, July 17, 1924, p. 14.

¹¹ As the conference lasted beyond the time originally contemplated in the draft agreement, the dates specified were extended seventeen days by the protocol.

August 15th. The German laws to be promulgated and the Agent General for Reparation Payments to assume his duties.

August 23rd. Eight days after the promulgation of the German laws, the customs barrier between occupied and unoccupied Germany to cease.

September 5th. Twenty days after the same event, the restrictions imposed since January 11, 1923, on movements of persons, goods and vehicles between occupied and unoccupied Germany to be removed.

September 20th. The other measures prescribed in the decision of the Reparation Commission of July 15th to be fulfilled.

October 5th. The Allied program for the restoration of Germany's fiscal and economic unity to be fulfilled.

Remittances to the Agent General for Reparation Payments are to be made by Germany every ten days, in such amounts as will place in his hands each month one-twelfth of the first annuity provided by the Dawes plan, the first remittance to be made on August 15, 1924. Until the economic and fiscal evacuation of the Ruhr has been completed, provision is made for deducting from the German payments the amounts of collections and charges levied by France and Belgium, including the net profits of the railways, less an allowance of two million gold marks per month to cover the cost of collection. The amounts of such collections and charges are to be paid by the French and Belgian occupying authorities to the Agent General for Reparation Payments. Provision is also made for deducting from the German payments the amount of receipts from the British Reparation Recovery Act and similar acts of the Allied Governments, and of the paper marks supplied to the armies of occupation.

Upon the fulfillment of the measures to be taken by September 20th, the railway system of the Reich will be transferred to and operated by the new company provided by the Dawes plan. Beginning October 5th, the lines operated by the French and Belgian Regie will be worked on account of the new company, under the control of a Railway Organization Committee, and upon the signature of the present agreement the details of the actual transfer are to be worked out between the regie and the committee so that the transfer will be completed by November 20th.

The agreement grants an amnesty for political offenses committed in occupied territories since January 11, 1923, except crimes against life resulting in death; and for the remission of all sentences and penalties imposed for them, except that fines already paid will not be reimbursed. Mixed commissions set up by common agreement will be utilized to solve any disagreements growing out of the fulfillment of these provisions.

Any disputes between allied merchants and the German authorities, arising out of the change of régime, will also be decided by mixed commissions.

Finally, the agreement provides that the Permanent Court of International Justice will settle all disputes which may arise between the Allied Govern-

ments, or any one of them, and Germany, which can not be settled by negotiation.

The fourth agreement of the London Conference provides for the modification of Annex 2 to Part VIII of the Treaty of Versailles, with reference to declarations of default and sanctions. As under the treaty this Annex may be amended by the governments represented upon the Reparation Commission, Germany is not a party to the present agreement. The agreement provides that a citizen of the United States shall be added to the Reparation Commission when it is deliberating on any point relating to the Dawes Report. He is to be appointed for five years by the Reparation Commission acting unanimously, and lacking unanimity, the appointment is to be made by the President of the Permanent Court of International Justice (new paragraph No. 2 A).

Another new paragraph (No. 16 A), is to be inserted in the Annex providing that if the decision of the Reparation Commission upon any application that Germany be declared in default in her obligations, either under the Treaty of Versailles or the Dawes Report, has been taken by a majority, any member who has participated in the vote may within eight days appeal from the decision to an arbitral commission of three members, to be appointed in the same manner and for the same period as the American member on the Reparation Commission. The adoption of this amendment made necessary a modification of Paragraph 17 of Annex 2, to bring it into conformity with the new procedure.

The London agreement next deals with the question of the sanctions which may be imposed on Germany under Paragraph 18 of Annex 2 of Part VIII of the Treaty of Versailles. It was under this paragraph that France, Belgium and Italy claimed and exercised the right, without the concurrence of Great Britain, of going into the Ruhr to compel Germany to meet her reparation obligations. It reads as follows:

The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective governments may determine to be necessary in the circumstances.

Article 2 of the London agreement stipulates that sanctions will not be imposed on Germany in pursuance of Paragraph 18 of Annex 2 "unless a default within the meaning of Section III of Part I of the report of the said Committee of Experts [Dawes Report] has been declared under the conditions laid down by the said Annex as amended in conformity with this agreement."

Section III of Part I of the Dawes Report is rather curiously worded. It begins with a statement that political guarantees and penalties and questions of military occupation fall outside the committee's jurisdiction, and

then proceeds to define the conditions and manner in which the sanctions of this nature already imposed may be reimposed. The section is short and the pertinent paragraphs read as follows:

III. MILITARY ASPECTS—*Contingent Sanctions and Guarantees:* If political guarantees and penalties intended to ensure the execution of the plan proposed are considered desirable, they fall outside the Committee's jurisdiction.

Questions of military occupation are also not within our terms of reference.

It is however our duty to point out clearly that our forecasts are based on the assumption that economic activity will be unhampered and unaffected by any foreign organization other than the controls herein provided. Consequently, our plan is based upon the assumption that existing measures, in so far as they hamper that activity, will be withdrawn or sufficiently modified so soon as Germany has put into execution the plan recommended, and that they will not be re-imposed except in the case of flagrant failure to fulfil the conditions accepted by common agreement. In case of such failure it is plainly for the creditor Governments, acting with the consciousness of joint trusteeship for the financial interests of themselves and of others who will have advanced money upon the lines of the plan, then to determine the nature of sanctions to be applied and the method of their rapid and effective application.¹²

It will be noted first that Paragraph 18 refers to sanctions in case of "voluntary default" by Germany, while Section III refers to them in case of "flagrant failure" to fulfil accepted conditions. This difference of terminology was the subject of discussion in the British Parliament on August 5, 1924, and Prime Minister MacDonald there gave an interpretation of the word "flagrant," which, it is reported,¹³ was accepted by the "Council of Fourteen" (Allied Premiers and Ministers) at London on August 7th, but the interpretation does not appear in the published documents. Mr. MacDonald's definition, given to the House of Commons on August 5th, was as follows:

The default which is a serious one, and which comes before the Reparation Commission; is a large general default, a default which cannot be judged to be a mechanical default, a default which it can be alleged and about which evidence can be presented,—“This could not have taken place unless there was a conspiracy in high places to throw off obligations undertaken in August, 1924, by the German Government to put this report into operation.”¹⁴

The London agreement then provides, in case a default has been declared in accordance with the conditions previously specified, that

¹² Cmd. 2105, pp. 13-14.

¹³ London *Times*, Aug. 9, p. 10.

¹⁴ This wording, which appears in the London *Times* of Aug. 9, p. 10, is slightly different from the report of Mr. MacDonald's statement in the House of Commons published in the *Times* of Aug. 6, p. 6, column 4.

The signatory governments, acting with the consciousness of joint trusteeship for the financial interests of themselves and of the persons who advance money upon the lines of the said plan, will confer at once on the nature of the sanctions to be applied and on the method of their rapid and effective application.

It will now be observed that while this article follows generally the wording of the last half of the third paragraph of Section III of the Dawes Report, it contains a very material and important modification. Section III seems to contemplate that any sanctions to be imposed upon Germany will be *determined* by the creditor governments acting jointly, but the London agreement changes this provision to read so that the creditor governments are obligated only to *confer* as to the nature of the sanctions.

In the Inter-Allied stage of the London Conference the possible effect upon the loan to Germany, recommended by the Dawes Report, of a declaration of default by the Reparation Commission was used as an argument for taking the power of declaring defaults out of the hands of the commission. The situation was thus stated by Mr. MacDonald in the House of Commons on August 4th: "On the British and American markets confidence in the Reparation Commission as a judicial body for declaring default has been completely forfeited, and we were informed that so long as it could destroy the economy and credit of Germany by a declaration of default which, as a matter of fact, might not exist, the security for the loan would be of so little value that the loan would not be subscribed."¹⁵

When the possibilities of this buga-boo as a political lever had been exhausted¹⁶ it was a simple matter for the Allied Governments to agree, as they did in the agreement under analysis, that in case sanctions are imposed, priority would be given to the service of the loan, not only as regards the resources pledged to its service, but as to resources which may arise from the imposition of sanctions, and that any dispute arising under the agreement between the signatories regarding the imposition of sanctions and the security for the loan are to be submitted to the Permanent Court of International Justice.

The agreement finally reserves to the signatory governments all of their existing rights under the Treaty of Versailles, unless otherwise stipulated.

The military, as distinct from the economic and fiscal, evacuation of the Ruhr was considered by the Allies to be outside the scope of the London

¹⁵ London Times, Aug. 5, 1924, p. 4.

¹⁶ The alleged interference in the negotiations of the so-called "international bankers," was greatly resented in France, and Mr. MacDonald in this connection made the following statement on the occasion above referred to: "I may take this opportunity of expressing my regret that it has been so often stated that the difficulties we encountered in this part of our work were created by bankers and financiers. They confined themselves to advising as to the state of mind of the investing public, and guided us against coming to agreements that would fail to produce the loan required. We are all much indebted to them for the information and help they gave us."

Conference, but the German delegates placed this question at the head of their agenda for discussion. It was taken up in separate negotiations between the French, Belgian and German plenipotentiaries, and the result embodied in an exchange of notes on August 16th in which France and Belgium agreed, if the London agreements are carried out in good faith by Germany, to proceed to the military evacuation of the Ruhr within a maximum period of one year from the date of the agreements. As an earnest of their intention to hasten the evacuation, France and Belgium decided that the day after the London agreements were signed the military should evacuate the zone between Dortmund and Horde in the Ruhr and territories outside the Ruhr occupied since January 11, 1923. In these notes the German Chancellor maintained the view "that the occupation of German territories beyond the German frontiers fixed by Article 428 of the Treaty of Versailles cannot be recognized as lawful." The British Prime Minister also wrote a letter to the French and Belgian Premiers in which he took note of the agreement with Germany, reiterated the position of the British Government as to the illegality of the occupation of the Ruhr under the Treaty of Versailles, and urged that the evacuation be hastened as much as possible "as, in the opinion of the British Government, the continued occupation may prejudice the working of the Dawes plan, and jeopardize the arrangements agreed to at the London Conference."¹⁷

The principle of arbitration, so generously drawn upon by the conference to reach agreement when other suggestions of settlement failed, was the keynote of the closing speeches of the principal delegates.

"I should like to impress upon the German people," said the British Prime Minister, "that as the result of this conference we have created a system of arbitration, of examination, of revision, which will enable both them and us to observe the working of the Dawes plan; to watch projects that may be doubtful in their effects and to come together in a sincere desire to rectify mistakes so soon as those mistakes are discovered."

In his reply the French Premier said: "France is happy in seeing that you have accepted to write on the front of the London document this idea of arbitration which we all hope will be generalized in order to substitute for the atrocious rule of war a régime of conventions based upon right and legality."

The American Ambassador concurred with the following statement: "There is one feature of this settlement which I wish to emphasize, and that is the recognition and furtherance of the principles of arbitration for settlement of international disputes. In my opinion, the greatest hope for the peace of the world lies in arbitration and judicial settlement between nations, and I am very glad this conference has contributed so much to forward this plan."

¹⁷ The notes exchanged are printed in the *London Times*, Aug. 18, 1924, p. 16, and Mr. MacDonald's letter is in the *Times* of Aug. 19, p. 10.

The conference closed with an expression of hope on the part of the German Chancellor that "the principle of arbitration, to which other speakers have referred, may evermore be applied in regulating the relations of the different peoples to each other, and thus help to establish a better adjustment of affairs."

Postscriptum

The contract for the loan of 800,000,000 gold marks to Germany under the Dawes plan was signed at London on October 10, 1924. (New York Times, October 11, 1924.) On October 13, 1924, the Reparation Commission approved a series of decisions to give effect to the terms of the loan and declaring that all conditions attached to the Dawes plan had been complied with and that the plan is now legally binding on Germany (New York Times, October 14, 1924). Subscriptions to the loan were opened on October 14 and it was at once oversubscribed (New York Times, October, 15, 1924).

CITIZENSHIP OF MARRIED WOMEN

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Many recent comments have been made with respect to the wisdom of Congress in passing the Act of September 22, 1922, entitled, "An act relative to the naturalization and citizenship of married women," commonly known as the Cable Act, and which granted a form of independent citizenship to women.¹ Among these comments we find the phrase, "probably accidental reasons," and an expressed sentiment that it is "questionable whether the majority of the women of this country really wanted the new law," and similar suggestions. It has been intimated that the law was passed solely as the result of the persuasive efforts of a minority of women.² In many instances little cognizance has been taken of the reasons for, and the actual facts involved in, the change.

It is well to reflect upon some of the conditions and circumstances which have really made imperative the reform which occasioned the passage of the act. Just because error is gray with age, is no reason why it should be respected. Nor is novelty a reason why it should be accepted. Was this act an unwarranted innovation? Can it be considered a step towards allowing a woman to take her husband's name in vain?

Every developed system of law has been confronted with the question: To what extent and for what purposes should the law recognize an equality between man and wife? The political aspect of this question is pertinent to the point at issue. Should the wife's political status be identified with that of her husband in personality and citizenship?³ History tells us that the answer to this question has been determined by the institutions of the times.

In looking for the reason as a basis for the particular status of the wife, we need look to the social and political organization of the people. The children of Israel serve as an illustration of the early independent nations and tribes who had prohibitions against intermarriage with aliens. In such a case, there was no opportunity for the woman to acquire citizenship by marriage.

¹ 42 U. S. Stat. at L. 1021.

² Sir Robert Younger, in Report of the Select Committee on The Nationality of Married Women (1923), p. 167; Richard W. Flournoy, Jr., "The New Married Women's Citizenship Law," 33 Yale Law Jour. (Dec. 1923), 159, 169.

³ For the purposes of this article it will not be necessary to distinguish between citizen and national, citizenship and nationality. Any confusion in the meaning resulting from the connotation of these words as used on the Continent will thus be avoided. They will be used interchangeably.

A high sense of nationalistic spirit was fostered, thereby tending to bolster up the political organization.

The grouping of tribes represented a great change. Early Roman citizenship was held only by heads of households in their kin-organized institutions. A marriage under the *ius civile*, the early strict law, between members of different households, did not confer citizenship upon the wife. She had no separate status before the law. She came into the *potestas* of the head of the household of which her husband was a member. Under the *ius gentium*, during the period of equity and natural law, citizenship was extended by degrees until, at the time of Justinian, all the free subjects of the Roman Empire obtained the privilege. But marriage did not affect the citizenship of the wife; and an alien woman, after marriage, could acquire citizenship as though she were not married.⁴

In Northern Europe, the situation was similar to that of early Rome, but its evolution took a different course. In early German law, the woman had no independent status. She came into the *mund* of her husband⁵ in a manner similar to the wife of a Roman coming into the *potestas* of the head of the household, as far as citizenship is concerned. The Canon Law recognized the principle of identity of husband and wife. The Common Law attitude has been termed the "submergence of the wife's legal individuality" into that of the husband.⁶ Among the peoples of Europe during the middle ages, tribe and kin organization prevailed to a very large degree.

As intercourse between groups developed, the local laws and customs of the various sections of the country looked with less disfavor upon marriage with members of foreign groups. The community property régimes of Germany and northern France recognized the desirability of having community property, in which both spouses were interested, subject to the disposition of persons of one nationality. This would avoid inevitable confusion under circumstances where alien property was treated in a different manner than property of citizens. The importance of this consideration cannot be overestimated. Citizenship was extended to the wife upon marriage. This type of local law came to be incorporated into the Code Napoleon,⁷ and later into other Continental codes.

Such a development was not the case in England. After the Norman conquest, with the land covered by aliens, few disabilities attached to them. When conditions later changed and English sovereigns ruled, a strong national spirit resulted. Blackstone tells us that British nationality could only be conferred by birth within the allegiance of the Crown. One born under the

⁴ It is well to note that Gaius, in commenting upon the citizenship of children, used various illustrations in which the citizenship of the mother differed from that of the father. Commentaries, I, secs. 90-92.

⁵ Huebner, *A History of Germanic Private Law* (Philbrick translation, 1918), pp. 584-590.

⁶ Maguire, "Suffrage and Married Women's Nationality," 54 *Am. L. Rev.* 641, 644.

⁷ See Brissaud, *Manuel d'Histoire du Droit Privé* (1908), pp. 92, 108; Code Napoleon, Arts. 12 and 19.

protection of the Crown owed perpetual allegiance. No British subject could be discharged from the obligations and privileges imposed by birth, although he go to some far off country and stay an indefinite period. Marriage did not affect the citizenship of the wife. There was no naturalization except by special act of Parliament.⁸

This strict attitude gradually weakened during the period in which national interest was attracted to far away colonies and foreign lands. An alien wife came to be treated as a British subject if she lived in Great Britain. This particular step was given legislative sanction by the Naturalization Act of 1844.⁹ Under the provisions of that act, an alien woman became naturalized upon marriage to a British subject. British protection was extended to a British woman who married an alien in all cases except during the time of her residence in the country of which her husband was a citizen. The privilege of expatriation, however, was not extended or recognized until 1870.¹⁰ By the Statute of Naturalization Act of 1870, a British woman took the nationality of the country of which her husband was a subject at the time of marriage. Thus the rule in France and England came to be the same. It so continued until the change in the French Code in 1889.

The United States followed a course similar to that of Great Britain. There was much hesitation to recognize legally a natural claim to expatriation, both because of a strong national spirit developed by the Revolutionary War¹¹ and because of small population.¹² It was not until 1868, the year of the first of the Bancroft Treaties,¹³ that a full privilege of expatriation was given by statute.¹⁴ Its one limitation is its suspension while the country is at war.¹⁵ Prior to 1855, the nationality of woman was not affected by her marriage.¹⁶ By the law of that year,¹⁷ an alien woman became an American citizen upon marriage to an American citizen.

The converse of this proposition, however, was in confusion until 1907.¹⁸

⁸ Blackstone's Commentaries, Bk. 1, Chap. 10. See Memorandum prepared by the Home Office, British Parliamentary Papers, Cmd. 1988 (1923), Appendix VI, Part 3, Sec. 4. (Appendices to the Summary of the Proceedings of the Imperial Conference, 1923.)

⁹ 7 & 8 Vict., Chap. 66, sec. 16.

¹⁰ 33 Vict., Chap. 14.

¹¹ Comments of Mr. Justice McKenna, *Mackenzie v. Hare* (1915), 239 U. S. 299; this JOURNAL, Vol. 10, p. 165.

¹² In a case refusing to recognize the privilege of expatriating oneself, it was said: "In countries so crowded with inhabitants that the means of subsistence are difficult to be obtained, it is reason and policy to permit emigration. But our policy is different, for our country is but sparsely settled and we have no inhabitants to spare." *Williams Case* (1799), Wharton State Trials, 652. Fed. Case No. 17708.

¹³ Treaties recognizing a privilege of expatriation by foreign naturalization. See treaty with Germany (1868). 2 Malloy, *Treaties, Conventions, etc.* (1776-1909), pp. 1298-1299.

¹⁴ 15 U. S. St. at L. 223.

¹⁵ Act of March 2, 1907, sec. 2. 34 St. at L. 1228.

¹⁶ *Van Dyne, Citizenship*; *Shanks v. DuPont*, 3 Pet. 242; *Beck v. McGillis*, 9 Barb. 35.

¹⁷ Rev. Stat. 1994, 10 U. S. St. at L. 604 (Feb. 10, 1855).

¹⁸ See Moore, *International Arbitrations*, pp. 2483-2506.

The act of March 2 of that year¹⁹ provided "that any American woman who marries a *foreigner*"²⁰ shall take the nationality of her husband." This act was construed by the United States Supreme Court in 1915 to mean that a wife became an alien upon marriage to an alien, even where the ceremony of marriage took place in the United States, and the matrimonial domicile was established and the parties continued to reside in the United States.²¹ It has been thought that the distinction between an *alien* and a *foreigner* was lightly considered.²²

The full realization that there was a statute so construed had a startling effect. It caused considerable comment and commotion.²³ Coming as it did during the war of 1914-18, it furnished an incentive to a reactionary attitude. It was not, however, the sole cause of the reaction. Previously, bills on the subject had been introduced in Congress. But it was one of the influences which occasioned increased public comment and interest. The new movement for the "emancipation of women" had its roots grounded in the hearts of a dozen live issues.

A recognition of the principle that citizenship is a high privilege, not to be easily lost or lightly acquired, need not in the least savor of reversion to the strict rule prohibiting expatriation. Such a prohibition respects an intense nationalistic spirit rather than the acceptance of reasons which have been recognized, though not generally, for about one hundred and fifty years, and which may justify a change in national allegiance.²⁴

The paramount objection which has been raised to the "independent citizenship" proposition has a theoretical basis. It is contended that it will affect the family unity. The ties which unite husband and wife do not result from motives and desires of a political nature. Rarely does marriage result solely because the man is a member of a certain club, a certain church, a certain athletic organization, a certain political party, or a member of a certain political state. Marriage and citizenship are two institutions, separate and distinct. Never in the history of the world did they have less in common than they do today. Why link them together? It would be most cynical to suggest to a wife: you married him, you must well bear the effect of

¹⁹ 34 U. S. St. at L. 1228.

²⁰ It lies our own.

²¹ *MacKenzie v. Hare* (1915), 239 U. S. 299; this JOURNAL, Vol. 10, p. 165.

²² See Wheaton's International Law (Lawrence ed.), p. 899, "In the United States it is incorrect to suppose that *alien*, as opposed to *citizen*, implies *foreigner*, as respects the country."

²³ See "Marriage vs. Votes," Cambell, 27 Am. Leg. N. 19; "Citizenship, Expatriation, Suffrage," note H. E. A., 4 Calif. L. Rev. 238; "Expatriation Resulting from Marriage to Alien Husband," W. W. S., 14 Mich. L. Rev. 233.

²⁴ For psychological attitude in nationality and individual choice, see Randall, "Nationality and Naturalization," 40 Law Quar. Rev. 18; also Oakesmith, Race and Nationality; Forbue, "The Nationality Law for the Wife," Legislative Counsellor (Feb. 1924, p. 6). 10 Henning, Va. St. at L., ch. 55, p. 129 (1779).

the remotest consequences of citizenship irrelevant as they may be to marriage.²⁵

It has already been suggested that the customs and institutions of the times in the history of the world gave rise to the basis of laws concerning citizenship. Thus it was that the rule of *dependent* citizenship was able to fit upon the "simple facts of life and customs"²⁶ of the people among whom the rule flourished. Upon those facts was constructed a theory, which, through universal application, found its way into other branches of the law. Whenever the customs and nationalistic spirit change, there is always a tendency to retain the framework and the theoretical formulas upported by it. Whenever the formula appears to become inapplicable to certain instances, it is relaxed. In the last fifty years, relaxation in its application to civil relations has been astounding to holders of the orthodox view. But it is usually a necessary result of the changes in those "simple facts of life and customs" of the people. It has been mainly brought about through the change in the position of woman, and a feeling of common interests internationally. During the last century there has been evident the evolution of the principle that aliens should be on the same footing as subjects in all except political rights. The position of woman has changed. The privilege of expatriation is recognized. Intense nationalistic spirit has waned. The marriage institution is surrounded by civil rights. The political significance of the family organization has diminished. Consequently the unity of the family is more affected by a change in civil relations than in political. A particular form of institution, once conducive to family unity, should not be forced upon the marital status when conditions have so changed that it is a source of extreme hardship. The unity of the family does not depend upon political technicalities. If equal legal capacity is admitted in municipal law, it should equally hold true in the woman's choice of her international position.

The importance of a recognition of independent citizenship for women was greatly magnified during the war of 1914-18. Property rights had been identified with political status. Native-born citizens were put under the trying circumstances of having their property in the hands of the Alien Property Custodian. This came as the result of a marriage, possibly some twenty or thirty years before, to a German subject who had not perfected his American citizenship. So startling were some situations that Congressional action necessarily resulted in specific relief. The act of February 27, 1921,²⁷ provided for the release from the hands of the Alien Property Custodian, of certain property of American-born women whose status was tech-

²⁵ Compare Flournoy, "The New Married Women's Citizenship Law," 33 Yale Law Jour., pp. 159, 168, and Maguire, "Suffrage and Married Women's Nationality," 54 Am. Law Rev., pp. 641, 661.

²⁶ Flournoy, *op. cit.*

²⁷ 41 U. S. St. at L. 1147.

nically that of alien enemies by reason of marriage. The situation proved to be a strong argument for independent citizenship.

The adoption of the nineteenth constitutional amendment, giving equal suffrage to women,²⁸ extended the franchise to some ten million women. This increased the importance of citizenship. On the one hand, any foreign woman who had married an American citizen was allowed the franchise. The States of the Union were not prepared for this, and few of them had educational tests. Some opponents of the Cable Act favored such tests rather than independent citizenship. Then, on the other hand, the privilege of voting was denied to an American woman because she had married an alien, although she continued to reside in the United States. The effect of this situation cannot be overestimated. Every women's organization with sufficient political influence sensed the condition. A solution in "independent citizenship for women" seemed inevitable.

From appearances, the movement for equality between the sexes will continue to advance. It may be noted that at the present time efforts are being centered upon the adoption of a constitutional amendment providing: Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.²⁹ This at least expresses a sentiment favoring the equality of the status of the sexes. We may truly regard equality of citizenship choice a step forward in this movement.

As touching upon family law, civil rights have been revolutionized since the days of the strict common law. One has only to look back upon the power of the husband to chastise the wife, the presumption that the husband is responsible for a crime committed by his wife in his presence, her ineligibility to contract, and the limited extent of her rights of ownership. Constantly since then a development slow and sure has progressed upon the principle of equality of rights for the two sexes. In England the change has come about largely within the last fifty years. The Married Women's Property Act, 1882, Naturalization Act of 1914-18, Sex Disqualification Removal Act, 1919, are a few of the steps taken. Likewise, in the United States, property and contract rights of the wife have been undergoing severe change.³⁰ The situation of the economic independence of women has tended to aggravate this change. It has been recognized as a necessary one. The argument concerning family unity may well be directed toward developments in the field of civil rights. But what effect would it have to stem the tide?

Such a revolution in civil rights could not be effected without a similar tendency in political rights.

²⁸ 1920, 41 St. at L. 1823.

²⁹ S. J. Res. 21 by Mr. Curtis (Dec. 10, 1923), 68th Cong. 1st Sess. Sponsored by National Women's Party (letter to C. D. Hill, Feb. 6, 1924).

³⁰ Upon this subject see "Current Legislation, Equalizing the Status of the Sexes," 21 Colum. Law Rev. 712.

The Americanization Study³¹ addressed to all of the judges having jurisdiction of naturalization cases in the United States an inquiry consisting of two questions:

First. Would you favor legislation to permit the naturalization of a married woman in her own name, if personally acceptable, regardless of the alienage of her husband, or his failure to obtain or refusal to see naturalization?

Second. Would you favor reserving to a native-born American woman, if she desired it, the American citizenship which, under the present law, she sacrifices by marriage to a foreigner?

About two-thirds of the replies to each question were answered in the affirmative. The replies contained many suggestions of interest from one extreme view-point to the other. It is clear, however, that the preponderating view was in favor of a radical change in policy favoring independent citizenship.³²

A possibility of citizenship independent of marriage was partially recognized by the French law in 1889. A French woman, by a law of that year, loses her French nationality upon marriage to an alien, *unless* by the law of her husband's country she does not gain his nationality. A similar provision has been adopted by Belgium, Bulgaria, China, Italy, Mexico, Monaco, Portugal, Siam, and Venezuela.³³

Prior to the decision of *Mackenzie v. Hare*, 1915,³⁴ there had been presented in Congress several bills evidencing interest in legislative action on the subject and later the consequences of the rigid rules respecting property

³¹ A study carried out under the direction of Mr. Allen T. Burns, reported in eleven volumes. The studies were prepared through funds furnished by the Carnegie Corporation of New York. Letter of Mr. Burns to C. D. Hill, March 4, 1924.

³² J. P. Gavit, *Americans by Choice* (1922), pp. 315-317. Letter from Mr. Burns to C. D. Hill, March 4, 1924.

³³ 49 *Journal du Droit International* (Clunet), 1922, pp. 619-620, citing:

France: C. civ., Art. 19, modified by the law of June 26, 1889.

Belgium: *Loi sur l'acquisition et la perte de la nationalité* (June 8, 1909), Art. 11, *Mém. du* 17 juin 1909; *Pasimie*, 8 juin 1909, No. 137, p. 112. [See also law of May 15, 1922.]

Bulgaria: Law of Dec. 4, 1903; law of Jan. 10, 1908, Art. 16.

China: Law of Nov. 18, 1912, Art. 12a. [See also revised law of nationality, Dec. 30, 1914.]

Italy: Law of June 13, 1912, Art. 10.

Mexico: Law of May 28, 1886, Art. 2, sec. 4.

Monaco: Law of June 26, 1900.

Portugal: C. civ., Art. 22, sec. 4.

Siam: Law of April 10, 1913, Art. 4.

Venezuela: C. civ. of 1916, Art. 22.

See also, *loc. cit.*, Costa Rica, laws of 1886-1889, Art. 4, sec. 5; Nicaragua, law of Oct. 2, 1894, Art. 2; Salvador, law on foreigners of 1886, Art. 3; Serbia, C. civ., Art. 48, providing that a Serbian woman who marries an alien loses Serbian nationality if by the laws of the country of her husband a woman would lose her nationality by marriage to a Serbian.

Swiss citizenship is not lost except by explicit renunciation before the competent Cantonal authorities.

³⁴ 239 U. S. 299; this JOURNAL, Vol. 10, p. 165.

rights of aliens during the war caused the introduction of a number of bills to relieve the grave situations which presented themselves. None of the bills were ever reported from the committees to which they were referred. It was not until 1922 that definite action was taken.

The purpose of the Act of September 22, 1922, has been stated. It provides that any woman who is eligible to citizenship who marries an American citizen, or whose husband becomes naturalized as a citizen of the United States, shall not become a citizen because of the marriage or naturalization. She may, however, become separately naturalized in accordance with the naturalization laws, with the exception that no declaration of intention is required, and she need reside in the United States only one year immediately prior to the time of filing her petition. A woman citizen of the United States does not cease to be a citizen by reason of her marriage to an alien, unless she makes a formal renunciation before a court having jurisdiction over the naturalization of aliens, or if she marries an alien ineligible to citizenship. In case she resides after marriage, for two continuous years in a foreign state of which her husband is a citizen or subject, or for five years outside of the United States, she is subject to the same presumptions as a naturalized citizen.³⁵ If, at the termination of the marital status, she is an American citizen, she retains her citizenship regardless of her residence. Women who acquired their citizenship by marriage before the passage of the act retain their citizenship. Those who had lost it may become naturalized as suggested for alien wives of American citizens. No certificate of arrival, however, is required. Appropriate sections of the Revised Statutes and the Expatriation Law of 1907 were repealed.³⁶

Thus was acquired a form of "independent citizenship for women" in the United States. It is interesting to note that this nominal independence of citizenship does not mean equality of citizenship. In fact several points of inequality of citizenship rights between man and wife exist.

If an American citizen marries a woman ineligible to citizenship, he retains his American citizenship. But if an American woman marries an alien who is ineligible to citizenship, she loses her American citizenship. This situation was mentioned in Congress before the passage of the act, but it met with no serious criticism.³⁷ It may be that in such a case, it is well to consider the fact that it is still usually recognized to be the custom and the proper thing for the husband to furnish the home and to carry the economic burden. The wife usually follows the husband in such efforts. It is also well to note that an alien who marries an American woman must still fulfill the five-year requirement of residence before naturalization; while an alien woman after marriage to an American citizen requires only one year. If an American

³⁵ "It shall be presumed that he has ceased to be an American citizen." Act of March 2, 1907, sec. 2; 34 U. S. St. at L. 1228.

³⁶ Rev. Stat., sec. 1994, and secs. 3 and 4 of Act of March 2, 1907, 34 U. S. St. at L. 1228.

³⁷ 62 Cong. Rec. 9057, June 20, 1920.

woman, after marriage to an alien, remains abroad, she is followed by the same presumptions as an alien who has been naturalized. Such is not the case with an American man. These may be considered the most striking differences.

The possibility of hardship arising under the new law was by no means made impossible. Several classes of serious difficulties have become quite apparent. "Statelessness"—lack of citizenship—results in many cases. As previously stated under the citizenship laws of some countries, a woman *retains* her citizenship if she does not acquire the citizenship of her husband upon marriage by virtue of the foreign law. But the following twenty-four countries have citizenship laws under the provisions of which a woman who marries a foreigner loses her own citizenship and acquires that of her husband: Austria, Brazil, Bolivia, Canada, Cuba, Denmark, Dominican Republic, Germany, Great Britain, Greece, Guatemala, Haiti, Holland, Hungary, Japan, Luxemburg, Norway, Peru, Persia, Poland, Roumania, Spain, Sweden, Turkey.³⁸ If her husband be an American citizen and the marriage occurred since September 22, 1922, she would become stateless in every case, for by the law of that date she does not acquire American citizenship by marriage. No country can by legislation give a woman citizenship in another country. She must first become naturalized. This process requires at least one year of continuous residence within the United States, Hawaii, Alaska, or Porto Rico, immediately preceding the filing of her petition.

(a) Thus, a British woman, upon marriage to an American in England

³⁸ 49 *Journal du Droit International* (Clunet), 1922, pp. 618-619, citing:

Austria: C. civ., Art. 32.

Brazil: Law of Sept. 10, 1860.

Bolivia: C. civ., Art. 11.

Canada: Law of July 7, 1919, Art. 11.

Cuba: C. civ. espagnol, Art. 22.

Denmark: Law of March 29, 1898, Art. 6.

Dominican Republic: C. civ., Art. 19.

Germany: Law of July 22, 1913, Art. 17-6e.

Great Britain: Law of Aug. 7, 1914, Art. 10.

Greece: C. civ., Art. 25.

Guatemala: C. civ., Art., 56.

Haiti: Law of Aug. 30, 1907, doct. 9.

Holland: Law of Dec. 12, 1892, Art. 5.

Hungary: Law of Dec. 20-24, 1879, Art. 34.

Japan: Law No. 27, March 15, 1916, Art. 18.

Luxemburg: C. Nap., Art. 19.

Norway: Law of April 21, 1888, Art. 2b.

Peru: C. civ., Art., 41.

Persia: Law of Aug. 7, 1894, Art. 11.

Poland: Law of Jan. 20, 1920.

Roumania: C. civ., Art. 12.

Spain: C. civ., Art. 22.

Sweden: Law of Oct. 1, 1894, Art. 6.

Turkey: Law of Jan. 7, 1869, Art. 7.

becomes stateless and is entitled to no passport to enter the United States. She may enter as an immigrant or upon special parole in certain cases when the quota is full. This is an obvious disadvantage to a wife entering the United States for the purpose of becoming naturalized.

(b) Being entitled to no passport from either the United States or Great Britain, she would have the official protection of neither government while abroad. Thus, it would be inadvisable for her to go even with her husband, to visit abroad, to engage in missionary work, to take part in a commercial enterprise, or to accompany him even when he is an accredited official in the service of the United States Government. A permit to leave the United States or reenter, or a traveling certificate³⁹ does not lend governmental protection abroad. In case of insurrection, the American Government would make provision only for his protection. She would have the protection of no foreign government.

(c) Other cases arise which have an effect similar to that in (a). Suppose a British man and wife come to the United States. He proceeds to become naturalized. Prior to September 22, 1922, there was no necessity for her to do so. But since that date she returns to England for a short visit, during which time he becomes fully naturalized. She is immediately stateless, as in case the marriage occurred in England or America since the passage of the act.

Why should marriage, an institution very slightly connected with citizenship, carry with it such disastrous results? Surely statelessness is not one of the natural risks or disadvantages of becoming married. Nevertheless, a woman, under the present law, attempting through marriage to become a divinely sanctioned helpmeet to her husband who is an American citizen, is thereby rendered *stateless, a most unfortunate situation for the wife of an American citizen.*

It has been thought by some that these classes of cases would be remedied as they became apparent, or by changes in the laws of foreign countries, or by an international convention. The last suggestion has not received sufficient recognition at present, although it is being considered by a Congressional committee, and is being strongly advocated by various women's organizations and international associations. If attempts to change the laws of other countries to fit our present law, and thus avoid statelessness, meet with the same disastrous results as they have in England in the last two years, we cannot depend for immediate relief upon that suggestion. We must remedy our own local situations wherever they produce gross injustices. We created them. We must arrange to eliminate them. Equality of citizenship rights does not suggest statelessness. Surely it condemns it. A law covering these classes of cases would safeguard against the rupture, if any, in family unity caused as the result of statelessness. It must be noted that this

³⁹ Traveling passes are issued by the British Government; Sweden issues a "Passintyg"; in Germany, it is a "Personalausweis."

situation did not result from the attempt of the Cable Act to equalize the privileges of citizenship, but because it was not inclusive enough in respect to the situations arising under the conflict of American and foreign laws. It has been suggested that the United States issue passports to stateless wives of American citizens.⁴⁰ It seems that this would eliminate the immediate difficulties arising under these classes of cases.

There is another very important group of cases to which the previous discussion would also apply. Either an American citizen or his alien wife may be in such a position that it is necessary to remain abroad. It may be most inconvenient for the wife to retire to America for the one year requirement. This situation might occur to an employee of the government, a representative of an American business concern, a missionary,⁴¹ a teacher, a student, or any other person in a representative or individual capacity. Should there not be some other way for the wife to become naturalized? It is possible for this situation to be remedied by an act waiving the declaration and resident requirement, and arranging for the proceedings to take place before a governmental agent if abroad. An act might require only an oath of allegiance.

The third situation and the most common, is the case of an alien spouse of an American citizen who must come to the United States as an immigrant. This matters not whether he or she has lost previous citizenship. By marriage to an American citizen a Belgian woman would not lose her Belgian nationality. She would come to America only as an immigrant. Likewise a stateless woman. The British husband of an American must come as an immigrant. This was true prior to the Cable Act. But now, since one spouse enters freely, separation may result. A solution to this situation would be to admit the husband or wife of an American citizen as a non-quota immigrant, or mandatorily without immigration restrictions.⁴²

"Women ineligible to citizenship" were known prior to the Cable Act. "Wives ineligible to citizenship" are a creation of that act. The granting of passports might relieve the more immediate difficulties, but only abolition of this status would eradicate the fundamental difficulties inherent within it.

It may well be noted that in the United States, as elsewhere, civil rights have been identified with citizenship status. The Federal Homestead Law provides for settlement upon Federal land by citizens. It has been suggested that especially in border States does a difficulty here arise. A naturalized Mexican dies leaving a "simple Mexican peon woman, whose primitive back-

⁴⁰ Hearings before the Committee on Immigration and Naturalization on H. R. 6073, Feb. 12, 1924, p. 20. Also incorporated in letter of Feb. 23, 1924, from Congressman Tinkham to Congressman Porter, chairman Committee on Foreign Affairs, in support of the proposed Act, *id.*, p. 23. Reeves, "Nationality of Married Women," this JOURNAL, Vol. 17, p. 97.

⁴¹ Facts in case of Rev. and Mrs. Jules Ryff filed with House Committee on Immigration and Naturalization, Feb. 23, 1924. Such a situation is also disclosed by the introduction of H. J. Res. 132 by Mr. Kelly, Jan. 9, 1924, 65 Cong. Rec. 775. "Joint resolution admitting Edith Thomas to the character and privileges of a citizen of the United States."

⁴² See Act of May 26, 1924, secs. 4 (a) and 6 (a).

ground makes the process of naturalization almost impossible."⁴³ In many States the laws relating to mothers' pensions provide only for citizens. Similarly, workmen's compensation laws reduce the amount allowed to aliens. Municipal employment, so often extended to widows of former employes, bars aliens in many places. In like manner, difficulties arise in community property, inheritance, taxation, granting of rights of action, and in many other ways. "In a question of separation, financial transaction, divorce and custody of children, the wife's case against the husband is that of an alien against an American citizen."⁴⁴

Other considerations are also worthy of note. A failure of the women to become naturalized will result in fewer citizens. It is more difficult for an immigrant woman to become educated or to attend naturalization classes. She is so closely attached to her home and children. She has a natural aversion to official procedure. On the other hand, the husband's associations give him an opportunity to learn and become acquainted with the new government of his choice. Such an alien woman will not encourage her husband to become naturalized, for she would feel that she could not follow. The attitude of the husband might well be that he owes it to his wife not to become naturalized. On the other hand, it has been suggested that citizenship means more to an alien woman when separately given. It has resulted in the extension of women's schools. Efforts might be made to carry the educational process into the homes. Statistics showing increases in naturalizations since September, 1922, should not be compared with statistics previous to that time without considering the fact that alien wives must now become naturalized. This is a serious difficulty, and as time goes on it will tend to restrict immigration. Statistics will show that fewer aliens are being absorbed into the ranks of citizenship.

Difficulties arise under the immigration rules.⁴⁵ Previously a wife of a naturalized American citizen was admitted although she was suffering from some disease which was curable. Now she is treated as other aliens. In case of sickness, her husband may be unable to care for her in a private institution. If she thereby becomes a public charge, she is faced with deportation.

The suggestion that there will be difficulty in handling the increased number of naturalization cases is of small relative consequence.

At the present time, the problem of dual nationality—citizenship in two countries—does not appear serious. Many treaty agreements eliminate the possibility of such a situation in many cases. The difficult situations of the past involving dual nationality arose in respect to the military service requirement in some countries. But it has not affected women. Consequent-

⁴³ Foreign Language Information Service, Editorial Committee, "Women Without a Country," Release no. 38, Oct. 8, 1923.

⁴⁴ Statement issued by New York Women's Trade Union League.

⁴⁵ See "What is the Cable Act?" Razovsky, in *The Immigrant*, Oct., 1922.

ly, it is hard to see why it would be improper for them to place themselves under the protection of two countries. Benefits accumulate to a woman who has dual or multi-nationality. Such relations are and should be regulated by international agreement.

It has become quite obvious that the problem of the nationality of married women has assumed an international rôle which exceeds in importance the circumstances attached to the change in the French Civil Code in 1889. It may be possible that the legislative powers of the world will follow the lead of Congress as they did the action of the commission which drafted the French Code of 1804. Increasing interest has been evidenced in the legislation of Belgium, Bulgaria, China, Italy, Mexico, Monaco, Portugal, Siam, and Venezuela,⁴⁶ providing for loss of citizenship by the wife upon marriage to an alien, unless the nationality of the husband is not acquired.

By the British law of 1914,⁴⁷ the wife of a British subject is deemed to be British, and the wife of an alien to be alien, but if a British husband of a British subject ceases to be a subject during the continuance of the marriage, the wife may elect to retain her nationality. The statute passed in 1918 allows a woman of English birth, after obtaining permission from the Secretary of State, to resume her British nationality in case she had lost it.⁴⁸

On March 8, 1923, the House of Commons passed a resolution favoring the appointment of a select committee to meet with a committee of the House of Lords to investigate the subject of the nationality of married women.⁴⁹ This plan was approved by the House of Lords, and the resulting committee, after two months of inquiry, failed to advise any change in the existing laws.⁵⁰ It was equally divided in opinion.

At the Imperial Conference of 1923,⁵¹ the Commonwealth of Australia Government proposed an amendment of the Imperial nationality law in respect to the nationality of British-born women married to aliens. The advisability of a change in the present rule that "a British woman becomes an alien on her marriage to an alien, and there is no power to naturalize her during the continuance of the marriage," was suggested. It was noted that the wife's loss of British nationality tended to give rise to hardship in cases where the wife was deserted by her husband or separated from him. The committee of the conference seriously considered the cases of hardship mentioned by the proponents of the change. So also were the arguments presented in the Houses by the two draft reports prepared by members of the select committee. The committee of the conference were of the opinion,

⁴⁶ See note 33.

⁴⁷ 4 and 5 Geo. V, c. 17, sec. 10.

⁴⁸ 8 and 9 Geo. V, c. 38, sec. 2 (5).

⁴⁹ Parliamentary Debates, Commons, vol. 161, p. 897.

⁵⁰ Report by the Select Committee, *The Nationality of Married Women*, July 24, 1923.

⁵¹ Session Oct. 1 to Nov. 8, 1923. Imperial Conference, 1923, Summary of Proceedings, Cmd. 1987 (November, 1923). Appendices in Cmd. 1988.

however, that the principle of assumption of the husband's nationality by the wife should be maintained.⁵² The report of the committee was approved by the conference.⁵³

The National Council of French Women proposed substitutes for Articles 12 and 19 of the code.⁵⁴ The effect of the change would be similar to the Cable Act,⁵⁵ but retaining the feature of the present French law preventing statelessness. During April, 1923, a bill of similar purport was introduced in the French Senate, but failed to pass.

It is reported that in 1920, the International Council of Women at their meeting in Copenhagen passed a resolution expressing the belief of women of many countries that the citizenship of married women should be upon an independent basis.

The International Law Association has been interested in the situation. In 1922, the Association met in Buenos Aires, and after discussion on the subject, unanimously carried the following motion:

The Conference, without going further into the extension, which may be very desirable, of the rights of women, a question which comes within the scope of the internal legislation of each country, is of opinion that it would be desirable to fix uniformly by treaty the nationality of married women, reserving to a married woman, as far as possible, the right to choose her own nationality.⁵⁶

In 1923, a conference of the Association was held in London. It adopted a proposal by Dr. E. J. Schuster to the effect that no adult person should automatically have to submit to a change of nationality. At the same conference there was explained a provisional draft international convention put forward by the International Woman Suffrage Alliance, founded in 1904, with headquarters in London. It was first proposed at the meeting of the Alliance at

⁵² Resolution: The Committee are of opinion that the principle of the existing law that the nationality of a married woman depends on that of her husband should be maintained. They nevertheless recommend that power should be taken to readmit a woman to British nationality in cases where the married state, though subsisting in law has to all practical purposes come to an end.

⁵³ The subject in its various aspects within and without the British Empire which was considered, is dealt with in a memorandum prepared by the Home Office. See Appendix VI, Part 3 of Cmd. 1988.

⁵⁴ See Report of the Thirty-first Conference, The International Law Association, p. 247.

⁵⁵ The proposed substitutes suggested by The National Council of French Women:

Art. 12—L'étrangère qui épouse un Français conserve sa nationalité; elle n'acquiert la nationalité française que sur sa demande expresse de naturalisation sur laquelle il sera statué par décret et après enquête.

Art. 19—La femme française qui épouse un étranger conserve sa nationalité à moins qu'elle ne déclare expressément dans son acte de mariage vouloir acquérir la nationalité de son mari. Même dans ce cas elle reste Française si dans la législation étrangère son mariage ne doit pas lui conférer la nationalité de son mari.

⁵⁶ Report of the Thirty-first Conference, Aug. 24-30, 1922, Vol. 1, pp. 247-251, 255-257.

Rome in 1923, and provides for citizenship independent of marriage or naturalization of the husband.⁵⁷

⁵⁷ Provisional Draft International Convention suggested by the International Woman Suffrage Alliance:

Preamble. The high contracting parties (here name the states signatory to the convention) recognizing the undesirability of treating as of little importance the privileges and responsibilities of nationality by imposing upon married women a nationality without their consent, and further desiring as far as possible to prevent the hardships arising from conflicts of law, hereby resolve to adopt, each in their own state, legislation on the nationality of married women, as indicated in the following general principles and particular applications thereof.

I. General Principles

- (a) Effect of Marriage: The nationality of a woman shall not be changed by reason only of (i) Marriage, or (ii) A change during marriage in the nationality of her husband.
- (b) Retention or change: The right of a woman to retain her nationality or to change it by naturalization, denationalization, or denaturalization shall not be denied or abridged because she is a married woman.
- (c) Absence of consent: The nationality of a married woman shall not be changed without her consent except under conditions which would cause a change in the nationality of a man without his consent.

II. Particular Application

- (a) Retention of nationality: A woman shall not lose her nationality by reason only: (i) That she marries a foreigner, or (ii) That during marriage her husband loses his nationality by naturalizing in another country or otherwise.
- (b) Loss of nationality: A married woman shall lose her nationality only: (i) Under the conditions which cause a married man to lose his nationality, or (ii) If she on marriage or during marriage is deemed by the laws of the state of which her husband is a national, to have acquired his nationality and she makes a declaration of alienage.
- (c) Acquisition of nationality: (i) A foreign woman shall not by reason of marriage only, acquire the nationality of her husband. (ii) A wife shall not by reason only of her husband's naturalization be naturalized. (iii) A married woman shall be naturalized under the conditions which naturalizes a married man. (iv) Special facilities shall be given to a woman to acquire the nationality of her husband, and special facilities may be given to a man to acquire the nationality of his wife.
- (d) Reacquisition of nationality: A married woman who has lost her nationality to acquire that of her husband shall on the dissolution of the marriage by death or divorce be given special facilities to reacquire her own nationality if she returns to her own country.
- (e) Retrospective provisions: (i) Loss of nationality by or through marriage—where before the adoption of the legislation based on this convention a woman has lost her nationality by reason only (1) that she married a foreigner, or (2) that during marriage her husband changed his nationality, she shall after the adoption of such legislation reacquire her nationality, if she makes a declaration to this effect; (ii) Acquisition of nationality by or through marriage—where before the adoption of legislation based on this convention a woman by marriage or by the naturalization of her husband acquired his nationality she shall retain it unless she makes a formal declaration of alienage.
- (f) Protection for the stateless woman: If a woman by the laws of her own state should by marriage lose her nationality, she shall be entitled to a passport and to protection from her husband's state.
- (g) Additional article applicable only to states where the rights and duties of spouses in personal relations and as regards their property depend on nationality: In marriages which

On March 17, 1924, the author of the Cable Act introduced into the House of Representatives of the United States Congress a resolution which would authorize the President to call a conference of the governments of the world to adopt a convention on the nationality of married women, embodying the principle that a married woman should be given the same right as a man to retain or change her nationality.⁵⁸

Thus we see that the international situation is sensed and is being considered by many agencies, home and foreign legislative bodies, by national and international associations, and by many individuals.

One or two considerations might be noted before closing. Because of the fact that civil rights are so affected by political status, a new position in the latter will affect the former, causing confusion. There is a question whether it would be a good thing to give equal civil rights to all women in all the world. How it would revolutionize their social and economic status in many countries! Would their ability to change their customs, habits, educational training and laws be equal to such a change? Surely it seems inadvisable at the present time that women of every country, under present conditions, should be given independent citizenship. People generally have come to take it as a matter of course, because of the former law, that a woman takes the nationality of her husband. Many women have expected that as a consequence of marriage. Under the present situation, how much of a legal formality should the wife be compelled to undergo before acquiring the citizenship of her husband? Surely it is not conceivable that she should wait the five year period required for others. Is it best for her to wait even a year? From the other angle, a husband must wait five years in the United States. Why not allow the alien husband of an American citizen the same privilege as the alien wife of an American citizen. In other words, should an alien husband of an American citizen be compelled to wait the now required five years? It is a question whether the husband and wife should be put on an equal footing, or whether the husband should in this respect lead the way for the wife. "If two ride a horse, one must ride in front."⁵⁹ Otherwise it may well be suggested: to what purpose does the wife take the husband's name? Should she be allowed to take it in vain? Immediately upon marriage, it should be possible for her to become naturalized, or for the hus-

take place after the adoption of legislation based on this convention, the rights and duties of spouses in their personal relations and as regards their property shall be dependent on the law of the nationality of either the husband or the wife, at the time of their marriage, as they shall both agree at that time. But there shall be no change in the law of marriages which took place before.

III. Renunciation

The convention shall remain in force for five years and unless renounced shall be tacitly renewed every five years.

⁵⁸ H. J. Res. 219 by Mr. Cable, March 17, 1924; 65 Cong. Rec. 4520.

⁵⁹ Report of the Select Committee, The Nationality of Married Women, p. xiii.

band to acquire her nationality. If the parties so wish, it should be possible for both to be of the same nationality.

The independent attitude of the United States has created wide gaps which should be filled by appropriate legislation. The international confusion resulting from granting independent citizenship to the women of one country has been compared to burning the house to roast the pig. A matter assuming so vital a rôle in international affairs deserves the sincere consideration of an international tribunal or conference.

THE QUOTA PROVISIONS OF THE IMMIGRATION ACT OF 1924

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The Immigration Act of 1924 is a novel piece of legislation in two respects.¹ In it, for the first time, is a real attempt made to control immigration, measurably at least, at its source, and thus to reduce to a minimum the hardships and inhumanities that heretofore have prevailed to such an extent as almost to be regarded as a matter of course. And in it, for the first time also, are immigration and eligibility to citizenship recognized as related subjects, and ineligibility to become naturalized made a reason for the exclusion of aliens.² While it is by far the most drastic immigration statute ever passed by the United States Congress, it is in numerous respects the most humane measure yet devised.

The regulation of immigration by fixing quotas for foreign countries and then excluding all aliens born in those countries applying in excess of such quotas was tried for the first time in the Quota Act of 1921,³ which expired by limitation on June 30, 1924, and was at once superseded by the new Quota Act. When the 1921 act was passed the plan was regarded by all as highly experimental; indeed, at that time it was stated quite generally that its use was a temporary expedient only, intended to give the country a "breathing spell" and to allow Congress time in which to work out a "scientific" method of immigration control. Although many difficulties were encountered and great hardships and embarrassments arose in connection with the enforcement of that act, the idea of excluding by the quota method steadily grew in favor. And when Congress came to adopt "a more scientific" measure, that plan (very materially modified, however) was retained, evidently being regarded as the best method available.

1. *The main objects* of the new, as of the old, quota law are: first, a sufficient reduction in the volume of immigration, to give assurance that the country will not admit more annually than it can accommodate; and, second, making the reduction fall most heavily on the "new immigration" countries (of southern and eastern Europe), and most lightly on those

¹ The act is published in the SUPPLEMENT to this issue of the JOURNAL, pp. 208. Therefore it is usually possible, in the interest of brevity, to avoid quoting, and simply to refer to, its various provisions.

² An article by the author with respect to the provisions of the new law excluding aliens ineligible to citizenship, will appear in a future number of the JOURNAL.

³ Approved May 19, 1921, 42 Stat. L., 5; extended by Public Resolution No. 55 approved May 11, 1922, 42 Stat. L. 540.

countries (of western and northern Europe) from which our earlier immigration was principally derived—this in order to give assurance of the more rapid assimilation of those admitted. These, judging from the law itself and its “legislative history,” are the theories upon which Congress proceeded when formulating the measure.⁴

2. *The humane purposes* of this legislation and the necessity for amending the law in such manner as to effect those purposes may be thus described: both the general immigration statute and the quota act superseded by the new law had been found in practice to produce many hardships, some of which were of a heart-rending character. Moreover, the enforcement of the 1921 Quota Act often resulted in absurd consequences. The most severe hardships arising under the two laws consisted of the separation at United States ports of the immediate members of families. And under the Quota Act of 1921, with the competition which arose, on the part both of the immigrant-carrying vessels and the immigrants, to reach United States ports and apply for admission before a quota for a certain month had been exhausted, thousands of aliens were transported to this country only to find that others, embarking somewhat earlier than they, or traveling on vessels faster than theirs, had beaten them to the goal, and that they would have to return to their homes, which had often been broken up when the “mad rush” for America began. The ridiculous spectacle was repeated again and again at New York of vessels racing each other into port in order that their passengers might get the preference under the quotas and their owners or masters escape the penalties imposed for bringing aliens in excess of the numbers allowed by the law.⁵

The experience with the previous laws, that with the 1921 Quota Act particularly, seems to have convinced the Congress that something must be done toward transferring the inspection of aliens to the sources of our immigration, and that the methods of determining the quotas and the “machinery” for keeping account of those filling up the quotas must be so improved as to stop the competition just described and the ridiculous and dangerous results thereof.

Under the 1921 act “a troublesome difficulty” was “the enforcement of the numerical limitation,” as that act required the “actual physical counting of human beings arriving by ship,” which was “a task of magnitude,” leading to mistakes, the racing of ships into ports, delays, disappointments, and hardships, and “distressing appeals for relief in individual cases.”⁶ So Congress determined that the new law should contemplate the counting of “certificates (visas), not persons”; that the law should provide “for enforcement of the numerical limitation not by counting immigrants upon

⁴ See H. Rep. 350, 68th Cong., 1st sess., pp. 12–14.

⁵ See H. Rep. 350, 68th Cong., 1st sess., p. 12, and *Congressional Record*, Vol. 65, Part 6, p. 5465.

⁶ H. Rep. 350, 68th Cong., 1st sess., p. 12.

their arrival, but by counting 'immigration certificates' ⁷ issuable at American consulates overseas." ⁸ And it was also provided, in connection with the visa system discussed hereinafter, that the consuls should not issue a visa to any immigrant if it should appear to him from the evidence presented that such immigrant was a member of any class excluded by the immigration laws.

Aside from these general provisions intended and calculated to reduce the hardships and inhumanities of immigration control, Congress has made a number of exceptions to the law exempting certain classes of aliens from its operation, some of which have the humane object of preventing the separation of families. These are discussed below under the headings "Classes exempted" and "Preferences." Moreover, the difficulties which had arisen under the old law from the fact that, nationality being determined rigidly by place of birth, immigrant families would sometimes apply some members of which were of one and some of another nationality and for some of whom a quota would be open while for others none would be available, were overcome in the new law by specifying exceptions to the method of determining nationality—discussed hereinafter under the heading "How nationality is determined."

3. *How quotas are determined.* The new law effects drastic changes in this regard. Under the 1921 act the "quota base" was the census of 1910, and the number of admissions allowed to any nationality annually was three per centum of the number of foreign-born shown by that census to be in the United States. The new law makes the "quota base" the census of 1890, and the percentage two, with a proviso that the minimum quota for any nationality shall be 100. The quota so calculated is to remain in force until June 30, 1927. On July 1, 1927, an arrangement, known as the "national origins" plan, is to come into operation. Under it "the annual quota of any nationality" will be "a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin . . . bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100." ⁹

The manner of calculating the quotas under the two per centum plan is specified with great care and particularity in subdivisions (b), (c), (d), and (e) of Section 12 of the act, captioned "Nationality," while that of calculating them under the "national origins" plan is specified with equal clearness in subdivisions (c), (d), and (e) of Section 11, captioned "Numerical Limitations." No good purpose could be served here by repeating those specifications.

⁷ These when the House and Senate bills were finally merged and enacted into law were called "visas," not "certificates."

⁸ H. Rep. 350, 68th Cong., 1st sess., pp. 1 and 12.

⁹ Subd. (b), Sec. 11.

4. The "*national origins*" plan, being entirely new, and the claim being made for it that, instead of arbitrarily reducing the volume of immigration, in general, or from certain countries, it is a scientific plan for keeping America American, it is well worth while to give a brief synopsis of the lengthy and painstaking description of it furnished to the Senate by its proponent, Senator Reed of Pennsylvania, with a reference to the record where those interested may go into the details if they please.¹⁰

The principle upon which the "*national origins*" plan runs is this: The real assimilation of aliens depends to a very large extent upon their associates after entering—"we can easily assimilate" them "if their origins resemble the origins of the people they find when they get here." The fixing of the quotas by allowing a certain percentage of the number of a certain nationality here to come in annually is artificial and (while not discriminatory in the racial sense for which such system is generally criticized) is discriminatory in that it fails to take into account the origins of our *native-born* population; and, if our racial stock is to be preserved in approximately its present condition, a sound policy demands that calculations with respect to the numbers of the various nationalities to be, from time to time, admitted shall be based upon a determination of the national (or racial) origins of *all* the people here with whom the new arrivals are to intermingle and intermarry.

This is, indeed, a scientific method of determining quotas, if it is feasible to make even approximately correct calculations of the kind contemplated. And there would seem to be little real ground for doubting its feasibility.

5. *How nationality is determined.* The 1921 act provided simply that "nationality shall be determined by country of birth, treating as separate countries the colonies or dependencies for which separate enumeration was made in the United States census of 1910." The new law, under the caption "Nationality,"¹¹ repeats this provision, inserting after the word "dependencies" the words "or self-governing dominions," and changing "census of 1910" to "census of 1890," and then adds two very important exceptions. As these provisions originated with the House committee, the best explanation of them doubtless is that given by the committee, as follows:

The question of nationality is of importance in the enforcement of a numerical limitation. Since the enactment of the 3 per cent law some perplexing problems have been presented by reason of different nationalities represented in the same family; by reason of changes of allegiances; and by reason of doubt as to places of birth.

On the whole, the committee believes that determination of nationality by country of birth, while not always just or equitable, is the most satisfactory principle upon which to base the quotas. No other feasible principle has been evolved.

¹⁰ *Congressional Record*, Vol. 65, Part 6, pp. 5460 *et seq.* See also *id.*, Part 6, pp. 5942-5945, and *id.*, Part 7, p. 6457.

¹¹ Subd. (a), Sec. 12.

The bill makes two important departures from the birth-nationality principle: First, the nationality of a minor child is fixed as that of its accompanying parent; second, if the nationality of a wife is different from that of her husband and if the quota for her nationality is filled, she shall be counted as of the husband's nationality, but without increasing the quota for his nationality.¹²

6. *The visa system.* The engrafting of this system upon the quota plan is one of the most important improvements effected by the new law. The plan originated with the House Committee on Immigration. As the provisions¹³ covering it were drawn by the committee, however, it contemplated that the visa should be placed upon immigrants' passports, that a certificate separate and distinct from the passport should be issued to aliens within the quota and not shown to be members of the otherwise excluded classes, and that a questionnaire should be used for the procurement of information from aliens applying for the certificate.¹⁴ But the Senate committee devised a plan, intended to accomplish exactly the same objects, which was eventually adopted when the bills went before the conference committee of the two Houses presumably because it was regarded as simpler, and as likely to be just as or more effective and less apt to cause "trouble in a diplomatic way."¹⁵

In explaining the plan embodied in his bill, Senator Reed of Pennsylvania asserted that the visa would have a double effect; that it would insure the holder's admission under the quota law, and would also "make sure, as far as we are able to do it, that the immigrant is not within one of the prohibited classes who would be debarred on reaching this country." He also made the following claims as to the merits of the plan, from a humanitarian as well as practical point of view:

We feel that more than nine-tenths of the debarments which have taken place in our ports will be avoided by this system of examination in connection with the issuance of the visé certificates. We know that the excess-quota cases will disappear, of course. It is obvious also that the illiteracy cases will never reach our ports, because the steamships will not take them without a visé certificate, and they can not get a visé certificate without writing out their application, so that those who can not write will never get started.

In the same way those who would become a public charge do not get here, because the consul asks them as one of the very first questions when they come for the certificate whether they have the amount of money that the immigration law requires them to have, and whether their ability to work is in any way impaired, as by amputations or disease. So we think that out of the 20,000 debarments—if I may

¹² H. Rep. 350, 68th Cong., 1st sess., pp. 18-19.

¹³ Sections 2 and 6 in the original House bill (H. R. 6540) and also in the bill finally passed by the House (H. R. 7995).

¹⁴ *Id.*, and H. Rep. 350, 68th Cong., 1st sess., pp. 10-11.

¹⁵ See Senator Reed's explanation of the differences between the two plans, *Congressional Record*, Vol. 65, Part 6, p. 5466.

coin that word—that have taken place in the last fiscal year at least 18,000 of them would never have occurred if we had had this system in effect last year.¹⁶

While perhaps it may be doubted that the benefits will be as great as thus prophesied, certainly the plan has much to commend it from every point of view. Indeed, it would be almost an ideal arrangement but for two serious deficiencies that must be apparent upon its face to all persons familiar with the operation of our immigration laws, to wit:

(a) No provision is made for inspection by United States medical officers prior to the procurement of the visa. One of the greatest menaces of immigration has always been the entry to this country of the mentally unsound, and perhaps no one thing has produced as much hardship as has the arrival at our ports of aliens, especially women and small children, afflicted with dangerous contagious diseases. Ordinarily it will be impossible for consular officers to detect either mental or physical afflictions. Why was this branch of the subject neglected in a measure in most other respects so carefully devised?

(b) Absolute authority to refuse the visa is vested in consular officials. No provision is made for an appeal. If the consul concludes that an applicant is an "undesirable," he may, without any chance of his reasons being reviewed by anyone else, simply decline to issue the visa; and no matter how insufficient or technical his reasons may be, the alien has no redress.¹⁷ This is the first time in the history of immigration legislation that subordinate officials have been allowed finally to determine the question of admissibility, in any other than technical medical cases, and even in those appeals to boards of surgeons have usually been possible. And the records of the Department of Labor contain numerous cases in which, had it not been for the right of appeal, most serious injustice would have been perpetrated; while the reports of the Federal courts contain many cases in which, even *with* the appeal to superior administrative officers, unfairness and arbitrariness prevailed.

7. *Classes exempted.* The general immigration law applies to *aliens*. The new quota law applies to *immigrants* only. And it divides immigrants into two classes—"quota immigrants" and "non-quota immigrants."¹⁸ Therefore, of course, an alien who is not an immigrant does not come within

¹⁶ *Id.*

¹⁷ Senator Reed's reply, when Senator Copeland asked the question "Does it not place undue power in the hands of a consul?" can hardly satisfy those who know the extent to which the power of arbitrary decision has been abused in connection with the enforcement of the immigration and exclusion laws. His answer was that the matter would be "practically" cared for because of the supervision exercised over the consuls by their superiors, abroad and in Washington (*Congressional Record*, Vol. 65, Part 6, p. 5466). But with no provision under which individual cases can reach those superiors, how can any alien who suffers an injustice secure that prompt redress to which, in all fairness, he is entitled?

¹⁸ Secs. 4 and 5.

the reach of the statute at all. But the non-quota immigrant, as well as the quota immigrant, must secure a visa. To the quota immigrant it is given only if a quota for his nationality is open, and it does not appear to the consul that he belongs to an excluded class. To the non-quota immigrant, as such, it is given whether or not a quota for his nationality is open, provided he furnishes "satisfactory proof" that he "is entitled to be regarded as a non-quota immigrant," and it does not appear to the consul that he belongs to an excluded class.¹⁹ While alien residents returning from a temporary visit abroad are classed as non-quota immigrants,²⁰ special provisions are made for the issuance to them of return permits,²¹ and authority is given for the issuance of regulations under which such aliens may be excused from procuring the visa. These may, therefore, be said to constitute a separate class of exemptions. So that the aliens absolutely exempted from the provisions of the act excluding by the quota system may be said to fall into the following three classifications:

(a) *Those exempted as non-immigrants*, and therefore entirely outside the law, are enumerated in Section 3. The first four of those numbered clauses need no comment. They describe exemptions with the character of which persons at all familiar with the operation of previous laws are familiar. The fifth is discussed fully hereinafter.²²

The sixth, covering the merchant class, is of great importance from both a domestic and an international point of view. It was not in the original bill, and was inserted in the second bill reported by the House committee as the result of a suggestion made by the Secretary of State, who was extremely anxious that the law should not contain anything calculated to interfere with the observance of our commercial treaties. The committee in adopting it intended that it should "take care of all the clauses of all our commercial treaties."²³ In view of the importance of our foreign commerce and of the fact that we have treaties of a commercial character with many countries, it is obvious that this provision must be construed and applied liberally and with the purpose of seeing that neither the letter nor spirit of the treaties is violated. Otherwise the clearly expressed intent of the Congress will fail of observance, and international misunderstandings and controversies will be constantly arising.

This provision, it should be carefully observed, is an absolute exemption, not only from the quota excluding clause of the law,²⁴ but also from the clause excluding aliens ineligible to citizenship.²⁵ Of course, therefore, it is

¹⁹ Secs. 8 and 2 and subd. (g) of Sec. 11.

²⁰ Subd. (b), Sec. 4.

²¹ Sec. 10.

²² Under the heading *Alien Seamen*.

²³ H. Rep. 350, 68th Cong., 1st sess., pp. 2-5.

²⁴ Subd. (a), Sec. 13.

²⁵ Subd. (c), Sec. 13.

just as broad, and just as narrow, with respect to one class as the other. Note also that it exempts those entitled to enter under *and in pursuance of* existing commercial treaties. On its face the exemption is in deference to the provisions of the various treaties. This obvious circumstance is borne out by everything on the point contained in the reports and debates relating to the bills which formed the act as passed.²⁶ Clearly, therefore, the various commercial treaties must be the source from which to ascertain the nature and extent of the privileges conferred by this exemption.

While, apparently, no instructions or regulations have as yet been issued by the Secretary of Labor with respect to the application of this exemption in the cases of aliens coming from countries to nationals of which generally the quota provisions relate, such regulations and instructions have been issued concerning those coming from countries to the nationals of which generally the ineligible to citizenship clauses relate.²⁷ If these instructions can be taken to indicate a general attitude toward this exemption—and as the law clearly contemplates that such exemption is to be applied to all affected by treaties in exactly the same way, they surely can be so taken—then the mercantile classes from the several countries with which we have commercial treaties will certainly have just cause for complaint. For the Secretary says in his instructions, that this exemption cares for “only those aliens coming to the United States in the course of a business which involves, *solely or principally*, trade or commerce between the United States and the country from which they come”; and, in his regulations, he specifies that no Chinese merchant claiming the right to enter under such exemption shall be admitted unless he proves that he is coming “for the sole purpose of engaging in trade and commerce between the United States and the country from whence (*sic*) he came.”²⁸ The Secretary ignores the words in the exemption “in pursuance of,” and, in effect, reads into the exemption, before the word “trade,” the words “import and export,” and, after it, the words “with the particular country from which he is at the time coming.” Treaties having the object of encouraging commerce are not ordinarily drawn in any such narrow terms; but it is in these treaties that the measure of the privileges here in mind is found.

Moreover, in the regulations and instructions just cited, the Secretary of Labor takes the position that the wives and dependent children of aliens admitted under this exemption can not accompany or join the exempted merchants here. This also would seem to be entirely too narrow a view of the law. May it not be anticipated that the courts, in cases which may

²⁶ H. Rep. 350, 68th Cong., 1st sess., pp. 2, 3, 4; House debate, *Congressional Record*, Vol. 65, Part 6, pp. 5648, 5661; *id.*, Part 8, pp. 8228–8233; Senate debate—*Congressional Record*, Vol. 65, Part 6, pp. 5743, 5744, 5746; *id.*, Part 6, pp. 6302, 6303, 6316.

²⁷ Bureau of Immigration Circular of Instructions No. 55266, dated Aug. 7, 1924; Bureau of Immigration General Order No. 4, dated Aug. 7, 1924.

²⁸ *Id.*

hereafter arise concerning aliens of the mercantile classes coming from countries of Europe with which we have commercial treaties, will take a view similar to that which they have heretofore taken in construing the Chinese treaty of 1830?²⁹ Their holdings with respect to that treaty have been that men entitled thereunder to come here for business purposes are entitled to have their wives and dependent children with them; that such wives and children, like the husbands and fathers, belong to the merchant class;³⁰ and also, in effect, that to exclude the wives and children "would obstruct the plain purpose of the treaty of 1880 to permit merchants freely to come and go."³¹

(b) *Those exempted as non-quota immigrants*, and therefore admissible even though their quotas are exhausted, are enumerated in Section 4. The third and fifth of these exemptions need no comment. With respect to the first, it should be stated that clearly Congress intended it to be a broad and complete non-quota exemption; for the House committee, when giving on the front of its report a list of the things effected by the bill, said: "The bill . . . exempts wives (and) children under 18 . . . of American citizens."³² It will be observed that the citizen must be residing in the United States in order for the alien wife or child to be admitted as a non-quota immigrant. Also that the entry of the wife or child as such is to be brought about through the filing of "a petition under Section 9" by such citizen. That section is captioned—

Issuance of Immigration Visas to Relatives, and bears also upon the subject of "Preferences within quotas" discussed hereinafter.³³ By Section 9 consular officers are prohibited from issuing a non-quota visa to an alien who claims to be a non-quota immigrant through relationship to a citizen unless and until authorized to do so by the Secretary of State. The authorization of the Secretary of State is obtained on the basis of an application

²⁹ The treaty of 1880 with China is held by both the Secretary of State and the Secretary of Labor to be a commercial treaty within the meaning of the new law (Instructions of Aug. 7, 1924, *supra*), as obviously it is when considered in conjunction with the treaty of 1903 with China.

³⁰ *In re Chung Toy Ho and Wong Choy Sin*, 42 Fed., 398, 399, cited with emphatic approval in *United States v. Mrs. Gue Lim*, 176 U. S., 459, 464.

³¹ *Yee Won v. White*, 256 U. S., 399, 400, 401. The application of this exemption to the cases of aliens coming from countries the nationals of which generally are excluded by the ineligible to citizenship provisions will be more fully discussed in the next article on this subject to appear in the JOURNAL.

³² H. Rep. 350, 68th Cong., 1st sess., p. 1. "Wives" here, of course, in view of the terms of the Cable Act (42 Stat. L., 1021), means all alien women married to citizens; but "children," in view of the fact that all children born abroad to American fathers are, under Sec. 1993, R. S., themselves citizens, means only children of *naturalized* citizen fathers, born abroad while the fathers were still aliens; it not being possible for such children to acquire citizenship until they commence "to reside permanently in the United States." (Sec. 5, Expatriation Act, 34 Stat. L., 1228; *Zartarian v. Billings*, 204 U. S., 170.)

³³ Under the heading "Preferences within the quotas."

filed with and investigated by the Commissioner General of Immigration. The exemption is so drawn that either a male or a female citizen resident in the United States may make the application for the issuance of a visa to a child under the age of 18.³⁴ The detailed provisions of the section are clear, and need no comment further than to say that a blank form of application³⁵ has been prepared by the Bureau of Immigration, which has also issued a set of regulations on the subject.³⁶

The fourth exemption obviously must have been placed in the law to meet the situation disclosed by the Gottlieb case.³⁷ Apparently Congress anticipated that the decision of the Circuit Court of Appeals, Second Circuit, in that case would be overturned by the Supreme Court, as later happened,³⁸ and adopted this provision to prevent the hardship that had resulted when in that case the administrative officers admitted a rabbi and excluded his wife and little children. At the same time it placed in the act³⁹ provisions the purpose of which doubtless is to guard against the sweeping effects of the decision of the lower court in the Gottlieb case—a decision well exemplifying the old adage "hard cases make bad law."

The second non-quota exemption, for the reasons already indicated, really constitutes a separate class, to wit:

(c) *Those exempted as returning immigrants.* Under Section 10 of the act any alien lawfully resident in the United States may obtain from the Commissioner General of Immigration a permit to reënter. Full details as to the nature and limited effect of the permit are given in the six paragraphs of that section; and the Commissioner General has issued a circular of instructions on the subject.⁴⁰ Applications for such permits must be filed with the Commissioner General before the applicant goes abroad; but, if the applicant is in a hurry to leave, will be forwarded to his foreign address if and when issued. The permit covers a period "specified therein," "not exceeding one year," but may be renewed for periods not exceeding six months, on the basis of an application, which must also be sent to the Commissioner General at Washington, D. C. Under another provision of the law⁴¹ and the regulations just mentioned, temporarily absent alien residents holding an unexpired permit of this character are excused from securing from a consular officer an immigration visa. But no temporarily absent

³⁴ See further comment hereinafter, under the heading "Preferences within the quotas."

³⁵ Form 633.

³⁶ Entitled: "Issuance of Immigration Visas to Relatives; Instructions for executing Form 633."

³⁷ United States *ex rel* Gottlieb *v.* Commissioner of Immigration, 285 Fed., 295.

³⁸ Commissioner of Immigration *v.* Gottlieb, U. S. Sup. Ct. Adv. Ops., 1923-24, No. 16, p. 588.

³⁹ Sec. 5.

⁴⁰ Form 634, entitled "Instructions for executing application for permit to reënter United States." The blank form of application is designated Form 631.

⁴¹ Subd. (b), Sec. 13.

resident alien is allowed to return to the United States unless he has either an unexpired permit or a visa.

(d) *Those exempted as unwitting non-observers of the law.*⁴² The law⁴³ excludes any immigrant who, on arrival at a United States port, is found to be (a) not of the nationality specified in his visa, or (b) a quota immigrant although specified in his visa as non-quota. Under this exception the Secretary of Labor may admit any otherwise admissible immigrant excluded at a port for either of these reasons, if the Secretary becomes "satisfied that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel from the last port outside the United States and outside foreign contiguous territory, or, in the case of an immigrant coming from foreign contiguous territory, prior to the application of the immigrant for admission." But if the alien involved is a quota immigrant, this power can be exercised only in the event a quota is open for him at the time; and the power of the Secretary of Labor is still further limited by requiring that, even if a quota is still open, the alien shall have the benefit thereof only if the Secretary of State deems it practicable to make effective before the end of the current fiscal year the reduction in the quota which would arise from his admission.

(e) *Bonding of exempts.* By Section 15 authority is conferred upon the Secretary of Labor to promulgate regulations to fix the conditions under which and the periods for which five of the classes exempted as non-immigrants and one of the classes (students) exempted as non-quota immigrants may enter. By the same provisions authority is also granted for the exaction of bond in the cases of aliens belonging to four of the classes exempted as non-immigrants, to wit: temporary visitors, transits through the United States, transits from one part of the United States to another through contiguous foreign territory, and those entitled to enter for business purposes "in pursuance of the provisions of a present existing treaty of commerce and navigation."

In the regulations⁴⁴ it is provided that in cases in which an alien has been granted a visa by a consular officer as a temporary visitor, a transit, or a person entering to carry on trade under a treaty, the immigration officer in charge at the port of arrival, if not satisfied that the alien is coming for the purpose stated, may compel such alien to furnish a bond in the sum of \$500. The wisdom, if not also the legality, of this absolute delegation of authority to subordinates may be doubted. Especially would this seem to be true with respect to merchants found by the consuls abroad to be coming here in pursuance of a commercial treaty. In such cases, at least, it seems probable that experience will show the exaction of bond must be very carefully super-

⁴² This peculiar exemption is found in subds. (d) and (e); Sec. 13.

⁴³ Subd. (a), Sec. 13.

⁴⁴ Bureau of Immigration General Order No. 30, June 6, 1924, caption "Bond Provisions."

vised. Congress has clearly indicated the intent that the law shall not so operate as to interfere with treaty rights, and doubtless many cases will arise in which an attempt to compel the furnishing of a bond would be regarded as in derogation of treaty rights, and as the useless giving of offense.

8. *Preferences within the quotas.* The provisions on this subject, found in Section 6, are simple and explicit. Two distinct classes of quota immigrants are to be given preference in the granting of visas.

The first relates to certain relatives of United States citizens (such citizens being 21 years of age or over). To get a clear idea of the meaning it is necessary to consider together this provision and the non-quota exemption in favor of the children of citizens appearing elsewhere in the act and already discussed.⁴⁵ This is the situation:

The wife, or unmarried children under 18 years of age, of a citizen of the United States who resides in the United States at the time of executing and filing Form 633 are non-quota immigrants, and are entitled to admission to the United States regardless of quota limitations.

If the citizen husband, or father, instead of residing in the United States, resides abroad at the time of filing Form 633; then his wife, or unmarried children under the age of 21, are quota immigrants and entitled to preference in the issuance of immigration visas.

The unmarried children, between the ages of 18 and 21, of a citizen of the United States who is 21 years of age or over are quota immigrants and entitled to preference in the issuances of immigration visas, regardless of the place of residence of the citizen parent.

The father, mother, or the husband of a citizen of the United States who is 21 years of age or over and who resides either in the United States or abroad at the time of executing and filing Form 633 are quota immigrants and entitled to preference in the issuance of immigration visas.⁴⁶

The second class of preferences consists of aliens "skilled in agriculture" and their wives and children under the age of 16. It was placed in the law as an amendment offered by Senator Simmons on the floor of the Senate, and its obvious purpose is to encourage the entry, within the quota limitations, of persons who will settle in rural communities and benefit agricultural enterprises.⁴⁷

The specification that neither class shall in practice be accorded "a priority in preference" over the other would seem to be calculated to cause embarrassment, occasionally at least.

9. *Operation of law in contiguous foreign territory.* The third non-quota exemption⁴⁸ is in favor, among others, of aliens born in either of the two countries contiguous to the United States. So that all such aliens are en-

⁴⁵ Subd. (a), Sec. 4, discussed under "Classes exempted."

⁴⁶ Department regulation entitled "Issuance of Immigration Visas to Relatives."

⁴⁷ See *Congressional Record*, Vol. 65, Part 7, pp. 6522-6528 and 6549-6551.

⁴⁸ Subd. (c), Sec. 4.

titled to receive non-quota visas. And in this act, as in previous immigration laws, Congress has recognized the fact that our close and neighborly commercial and social relations with our two next door neighbors necessitates that immigration from and through their territory shall be regulated and controlled along flexible lines. Therefore, the repetition in Section 17 of those portions of Section 23 of the general immigration law of 1917,⁴⁹ the purpose of which was to allow the administrative officers the utmost possible discretion in the supervision of this very difficult phase of immigration.

10. *Expulsions under the new act* are to be effected through the administrative processes provided in the general immigration law. And expulsion is to occur no matter how long the alien has lived in the country undisturbed by officers of the government, if it is ascertained that at the time of entry he was not entitled to enter under any of the provisions of the act, or even if it is ascertained that his offense has been merely remaining a "longer time than permitted under this act or regulations made thereunder." In this respect the law is the most drastic ever passed. Heretofore Congress has always thought it fair and proper to place a three year limit upon the power to expel where the offense involved is no more than an evasion of inspection, and a five year limit upon cases in which the alien was at the time of entry a member of one of the classes excluded, the cases to which no limitation was attached being those of the anarchistic, criminal, and sexually immoral classes.

11. *Offenses and penalties.* By Section 16 it is made unlawful for any person, transportation company, or vessel to bring to the United States by water from any place outside thereof, except contiguous foreign territory, any immigrant not in possession of an unexpired visa, or any quota immigrant possessing a visa describing him as a non-quota immigrant. A fine, administratively assessed, in the sum of \$1,000 is the penalty for committing either of these offenses, and, in addition the amount paid by the immigrant for his transportation must be paid over to the officials for refund to the alien when deported. This legislation is unprecedentedly drastic. The fines are five times as large as those ever heretofore assessed for similar offenses. Moreover, while perhaps neither the wisdom nor the fairness of fining a transportation company for bringing to this country as a non-immigrant without a visa an alien who is an immigrant, can be questioned, it does seem altogether unfair to fine such a company for bringing "any quota immigrant having an immigration visa the visa in which specifies him as a non-quota immigrant," and quite as unfair to compel the company to refund the cost of such alien's ticket. The visa wrongly describing such an alien is given him by an official of the United States Government authorized to issue it only upon "satisfactory proof . . . that the applicant is entitled to be regarded as a non-quota immigrant."⁵⁰ The immi-

⁴⁹ 34 Stat. L., 898.

⁵⁰ Sec. 8.

grant furnishes that "satisfactory proof." The transportation company takes no part in the matter. If not satisfied of the *bona fides* of the claim the consul can deny the application, and compel the applicant to proceed on a quota immigrant visa or not at all. Is it the purpose of the law to force the transportation company to go behind these visas and make an investigation of its own in every case in which an immigrant presents a non-quota visa? The harshness of the provision is somewhat relieved, however, by the fact that the precedent set for the first time in the 1921 Quota Act is followed, and the refunding of these fines allowed if the Secretary of Labor is satisfied that the offender "did not know, and could not have ascertained by reasonable diligence," prior to the departure of the vessel from the foreign port, that the person falsely claiming to be a non-immigrant or a non-quota immigrant, respectively, was not indeed such. It is to be expected that many of these fines will be assessed only to be refunded; for by what kind of "reasonable diligence," in the average case, can a steamship official prove that an alien has deceived a consul, and will it not often be just as difficult to ascertain, no matter how diligent the inquiry, that an alien who claims to be a non-immigrant is in fact an immigrant?

Other similar drastic provisions are found in Section 26, where Section 9 of the 1917 act is amended by multiplying the amount of the penalties by five, and in one instance by ten; and there the original provision that the fines shall not be remitted or refunded is allowed to stand.

Excellent provisions are found in Section 22 for the severe punishment, on conviction, of persons who may forge, counterfeit, or alter visas or permits, or utter, use, etc., forged or counterfeited visas or permits, etc.; of those who falsely personate others, or attempt evasion of the law by appearing under assumed names, or who furnish a visa or permit to a person not authorized by law to receive it; and of those who commit perjury in connection with the enforcement of the immigration laws.

12. *The alien seamen provisions.* The new act, like previous immigration laws, contains provisions some of which relate to aliens who are *mala fide* seamen and others of which relate to those who in good faith are members of that calling.

(a) *The bona fide seamen provisions.* "A *bona fide* alien seamen serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman"⁵¹ is not an immigrant within the meaning of this law. Therefore, an alien who is a *bona fide* seaman arriving at a domestic port "from any place outside the United States"⁵² is neither a quota nor a non-quota immigrant, and the only provisions affecting him are found in Sections 3 and 15 of the new law, under the captions "Definition of Immigrant," and "Maintenance of Exempt Status," respectively.

⁵¹ Clause (5), Sec. 3.

⁵² Sec. 3, opening clause.

While the effect of Section 3 is to place non-immigrants outside the reach of the provisions relating to quota and non-quota immigrants, respectively, Section 15 contains provisions to the effect that the admission of certain non-immigrants "shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed to insure that" when the period of their temporary admission has expired such aliens will depart from the United States. Under this authority the Secretary of Labor has issued regulations⁵³ the dual purpose of which is to permit all alien seamen who satisfy the Inspection Officers that they are *bona fide* members of that calling to enter the United States freely in the pursuit of their calling, and to prevent aliens who are merely pretending to be seamen from entering the United States in violation of law. The time during which a *bona fide* seaman may remain in ports of this country without re-shipping foreign is fixed at sixty days, and any alien seaman remaining longer, it is specified, shall be deemed to have abandoned his status and shall be taken into custody and deported.⁵⁴

Quite properly, the Secretary does not attempt to exact a bond in cases of this kind. Clearly the language of Section 15 and its references to clauses of Section 3 in connection with the authorization of bonds justify no other conclusion than that bonds could not be exacted. And the history of the legislation most distinctly indicates that the intention was that bonds should not be required in such cases. Suggestions were made for the incorporation in the law of a provision conferring such authority.⁵⁵ These provisions were opposed, not only before the House committee,⁵⁶ but before the Senate committee.⁵⁷ The result was that the bonding proposal in each and every form in which it had appeared was omitted from the measure as finally passed. And it is clearly shown by the debates that Congress concluded that a bonding provision should not be inserted because it would have the effect of repealing those provisions of the Seamen's Act of 1915,⁵⁸ which confer upon all alien seamen the right freely to go ashore in ports of this country.⁵⁹ Moreover, an attempt made to exact bonds in the cases of *bona fide* seamen of Asiatic races, under regulations promulgated in supposed pursuance of the 1917 act, had been disapproved by the courts.⁶⁰

⁵³ Bureau of Immigration General Order No. 38, dated Sept. 10, 1924.

⁵⁴ *Id.*, subd. 6, par. (c).

⁵⁵ See Committee print of H. R. 101, 68th Cong., 1st sess.; Hearings before Committee on Immigration and Naturalization, House of Representatives, 68th Cong., 1st sess., on H. R. 5, H. R. 101, H. R. 561, H. R. 6540, Serial 2-A, pp. 1107-1148; and *id.*, on H. R. 5, H. R. 101, and H. R. 561, Serial 1-A, pp. 152-180.

⁵⁶ References just given.

⁵⁷ Hearings before the Committee on Immigration, United States Senate, 68th Cong., 1st sess., on S. 2365 and S. 2576, pp. 198-203.

⁵⁸ 38 Stat. L., 1164.

⁵⁹ *Congressional Record*, Vol. 65, Part 6, p. 5830; *id.*, Part 9, p. 8577, pp. 8824-8825.

⁶⁰ *United States ex rel Lum Young v. Stump*, 292 Fed., 354, and *United States ex rel Ho Chung v. Tod*, therein described, *id.*, p. 360.

(b) *The mala fide seamen provisions.* These are found in Sections 19 and 20, and, like all of the provisions of the seamen's sections⁶¹ of the 1917 act, except those relating to the preparation of crew lists and the prevention of the entry of seamen afflicted with dangerous contagious diseases, refer only to alien seamen "excluded from admission into the United States under the immigration laws." That language, descriptive of the kind of alien seamen intended to be reached by the laws, was construed by the courts⁶² to confine the statute to those who were merely pretending to be seamen in an effort to gain unlawful admission to the United States, when inadmissible as immigrants, as no seaman, *as such*, was excluded from the United States by any of the immigration or exclusion laws. Of course, Congress must be presumed, when it placed in the new law upon this subject provisions relating to seamen and incorporated therein the exact language of the old law, to have readopted that language with knowledge of the judicial construction placed upon it.⁶³

It is unfortunate that this subject has not been more thoroughly dealt with. There is probably no one way in which, heretofore, violations of the immigration law have occurred more frequently or more seriously than through the *mala fide* adoption of the seamen's calling by aliens of the inadmissible classes. Although the Seamen's Act conferred upon seamen of all nationalities and races the right freely to go ashore in ports of this country, that right is conferred only with regard to those who are *bona fide* members of the calling and is limited to temporary entry in the pursuit of their calling; and, while this, of course, makes it necessary so to form immigration legislation as not to interfere with such rights of *bona fide* seamen, it does not prevent the enactment of legislation of a character calculated to give the immigration officials at least a fair chance of preventing violations and evasions of law.

In two rather minor respects the new law is an improvement over the old, to wit: (a) it is made the *imperative* duty of ship masters to prevent the landing of any seaman until the immigration officers have had an opportunity to examine his crew, and also to prevent the landing at all of any seaman who has been found to be *mala fide* and inadmissible and ordered held on board;⁶⁴ and (b) a rule of evidence is adopted,⁶⁵ which is intended

⁶¹ Sections 31 to 36.

⁶² *United States ex rel Lum Young v. Stump*, 292 Fed., 354, and *United States ex rel Ho Chung v. Tod*, therein described, *id.*, p. 360.

⁶³ *Edwards v. Wabash Ry. Co.*, 264 Fed., 618, C. C. A., 2d Cir. See also *Latimer v. United States*, 223 U. S. 501; *United States v. Cerecedo Hermanos y Compania*, 209 U. S. 337; *Heald v. District of Columbia*, 254 U. S., 20; *Von Bremen, McMonnies & Co. v. United States*, 168 Fed., 889, C. C. A.; *United States v. G. Falk & Bros.*, 204 U. S., 143.

⁶⁴ Compare Sec. 20 of the new law with Sec. 32 of the old, and note that the word "negligent" no longer appears in modification of the word "failure"; and see *The Nanking*, 290 Fed., 769.

⁶⁵ Subd. (b), Sec. 20.

to increase the incentive upon the part of ship masters against allowing the escape into the country of inadmissible aliens posing as seamen. But these improvements have been more than offset by the failure to have the act provide some reasonably satisfactory method of identifying aliens allowed to go ashore in United States ports on the claim that they are *bona fide* seamen; and by the fact that, although it was possible under the 1917 act to enforce regulations having their identification by a system of identification cards in mind, provisions which were in the bills until they went to conference contemplating the use of such identification cards were deliberately omitted from the measure before it was enacted into law. The report of the conference committee⁶⁶ makes no explanation of this omission; but an explanation of it was made on the floor of the Senate by the Senate manager of the conference.⁶⁷ It is thus clearly indicated that Congress, negatively at least, disapproved of the identification card system; and the Secretary of Labor has quite properly omitted from his recent regulations concerning alien seamen⁶⁸ any reference to the subject. Of course, the incentive to make use of this "loophole" is multiplied each time that the immigration law is made more restrictive; and it is difficult to imagine how the Department can possibly prevent extensive and serious violations of both the quota and the ineligible to citizenship provisions of this act, through the adoption *mala fide* of the seamen's calling by aliens belonging to nationalities or races excluded by such provisions.

The regulations contain a provision⁶⁹ of an eminently fair character with regard to the readmission to the United States of aliens previously lawfully resident here who have gone abroad while employed as seamen. Such an alien when returning and expressing an intention to resume his residence in the United States is permitted to do so although he possesses no immigration visa. But this provision of the regulations⁷⁰ is open to criticism, not only as it is likely to lead to unfair and arbitrary action, but as probably being an end in itself. Under this provision the attempt is made to delegate to immigration officials final authority to determine whether or not another person claiming to be a *bona fide* seaman is such and exclusive of the Department of Labor. It is being calculated only the detention on board, but the deportation of such a person is contrary to law. It obviously contemplates that aliens detained on board are to subordinate in the order of a subordinate official shall have the right to order, not an alien, but a subordinate official of Labor; otherwise there would have been no power to order, not an alien, but a subordinate official of the Department in such provision. The law as *mala fide* seamen by the Department of Labor.

⁶⁶ H. Rep. 716, 68th Cong., 1st sess.

⁶⁷ Cong. Rec., 68th Cong., 1st sess., p. 24.

⁶⁸ Bureau of Immigration General Order No. 38.

⁶⁹ Subd. 4 (a), General Order No. 38.

⁷⁰ Subd. 4 (b), General Order No. 38.

⁷¹ Subd. (a), Sec. 20.

13. *The burden of proof provision.* Section 23 of the law is constituted of this very important provision. The explanation of it given by the House committee is doubtless correct:⁷²

An alien seeking to enter the United States should not stand mute, but should assist the Government by showing admissibility if he can. No longer should admissibility be presumed until the Government can marshal its forces to prove inadmissibility. An alien remains within the country not by right, but by sufferance. If the Government challenges him, alleging that he is remaining unlawfully, the burden should be upon him to prove the legality of his sojourn or residence. This means reversal of the present rule, which has operated to the detriment of the United States.

No doubt, referring to the standing mute of aliens; the committee had in mind the important decision of the Circuit Court of Appeals for the Second Circuit in the case of an ex-president of Venezuela.⁷³ The Commissioner General of Immigration, some years ago, called attention to the serious situation that existed in this respect. He said: "We have been in a position (exemplified so aptly by the famous Castro case) where an alien could knock at our doors and upon being asked who and what he was, could give his name and then refuse to answer any questions the purpose of which was to divulge his character and antecedents, and yet could demand admission upon the ground that we had failed to show that he was within one of the classes enumerated in the law as inadmissible. Obviously this situation is deplorable. A nation, no more than a man, should be placed in a position where an outsider can demand the opening of the door without giving a full account of himself and showing that he is a fit person to enjoy the hospitality that he seeks."⁷⁴

While, obviously, this burden of proof will be of no particular value in the enforcement of the quota provisions of the new law in the cases of aliens who are quota immigrants (for the possession of a visa is indispensable anyway), the need for the law in this respect is no less now than it was when the former provision was in effect. General Caminetti made the observation above quoted. Provisions of the new law pass muster under all of the previous laws left intact but in such cases, but now they must affirmatively prove admissibility, and for amending the law in any case that the government has failed to prove inadmissibility, the Commissioner General, with the claims of non-immigrant and quota immigrants. Aliens must still show that they will arise so frequently under the new act; but the new act, but for the operation of this admirable provision, and can not claim in the new law. Moreover, the new law will be still another field for the operation of the new law.

⁷² H. Rep. 350, 68th Cong., 1st Sess., p. 155.

⁷³ United States ex rel. *Castro*, 100 F. 2d, 155.

⁷⁴ Annual Report of the Commissioner General of Immigration for 1919, p. 290.

of war and neutrality has been deemed appropriate in other emergencies of similar character, such as insurgency³⁰ and military occupation in time of peace.³¹ Thus, evidently it is the emergency which justifies the special law and not the special law which justifies the emergency. The United States has insisted that application of the laws of war and neutrality during rebellion does not make the rebellion lawful under the Constitution.³² No more does the application of these laws make war lawful under international law.

(Under international law, therefore, war is not a lawful institution, but an event, an unfortunate event, like invasion under municipal law, which renders the operation of normal law impossible and makes application of an emergency law of war and neutrality a *pis aller*.)

Conclus

But even events can be prevented by human effort. Have statesmen and jurists, using law as an instrument, progressed toward controlling the recurrence of wars?

Here it may be well to notice an ambiguity in the term "war." Courts have distinguished between "war in the material sense" and "war in the legal sense." Said Justice Nelson:

An idea seemed to be entertained that all that was necessary to constitute a war was organized hostility in the district or country in a state of rebellion—that conflicts on land and on sea—the taking of towns and capture of fleets—in fine, the magnitude and dimensions of the resistance against the Government—constituted war with all the belligerent rights belonging to civil war.

Now in one sense, no doubt this is war, and may be a war of the most extensive and threatening dimensions and effects, but it is a statement simply of its existence in a material sense, and has no relevancy or weight when the question is, what constitutes war in a legal sense, in the sense of the law of nations, and of the Constitution of the United States? For it must be a war in this sense to attach to it all the consequences that belong to belligerent rights. Instead, therefore, of inquiring after armies and navies, and victories lost and won, or organized rebellion against the General Government, the inquiry should be into the law of nations and into the municipal fundamental laws of the Government. For we find there that to constitute a civil war in the sense in which we are speaking, before it can exist, in contemplation of law, it must be recognized or declared by the sovereign power of the State.³³

³⁰ *The Three Friends*, 166 U. S. 1, 1897. "When insurgency exists, the armed forces of the insurgents must observe and are entitled to the advantages of the laws of war in their relations to the parent state." Wilson and Tucker, *op. cit.*, p. 64.

³¹ *Cross v. Harrison*, 16 How. 164, 1854; *Santiago v. Noguerras*, 214 U. S. 260, 1909; Instructions for the Government of the Armies of the United States in the Field, Gen. Ord. 100, 1863, cited as Lieber's Code, Art. 2.

³² *The Prize Cases*, 2 Black 665, 1863; Lieber's Code, Arts. 153, 154.

³³ Nelson, J. dissenting in *The Prize Cases*, 2 Black 635, 1863; Thayer, *Cases on Constitutional Law*, Vol. 2, p. 2348. Though the majority differed from Justice Nelson in holding that the President did not need to wait for Congress to recognize war in the legal sense, they did not deny this distinction, and it was later utilized by the court in *The Three Friends*, 166 U. S. 1, 1897. See also Hershey, *op. cit.*, p. 349.

A comparison of definitions discloses that each of these conceptions of war has been given two shades of meaning and thus four definitions may be distinguished.

In the material sense, war may be considered *an act or a series of acts of violence by one government against another*,³⁴ or a dispute between governments carried on by violence.³⁵

In the legal sense *war may be considered a condition or period of time in which special rules permitting and regulating violence between governments prevail*,³⁶ or a procedure of regulated violence by which disputes between governments are settled.³⁷

Thus the essence of war is successively considered an act, a controversy, a condition and a procedure. The first meaning which may be expressed by the phrase "act of war" is the usual conception of practical military men. To them war is a series of acts aimed at occupation of the enemy's territory, destruction of his military forces, and eventual reduction of him to complete

³⁴ Thus excluding acts by individuals or by government against individuals as in reprisals. The following definitions do not make this limitation. "War is an act of violence intended to compel our opponents to fulfill our will." (von Clausewitz, *On War*, [1st ed., 1832] London, 1911, Vol. 1, p. 2.) "War is the greatest and most magnificent of human actions." (Montaigne, *Essays* [1st ed., 1580], Cotton, trans., London, Vol. 1, p. 394.)

³⁵ "War is a contest or contention carried on by force" (Cicero, *Orat.* c. 45 [55 B. C.]). "War is a conflict of great interests which is settled by bloodshed. . . . War is nothing but a continuation of political intercourse with a mixture of other means" (von Clausewitz, *op. cit.*, Vol. 1, p. 121, Vol. 3, p. 121.) "War is a contest as between nations or states, carried on by force and with arms" (*Standard Dictionary*.)

³⁶ "War is the state of persons contending by force, as such" (Grotius, *De Jure Belli ac Pacis*, 1625, I, c. 2, par. 2, and *infra*, note 38). It will be noticed that this and the three following definitions do not confine war to relations between states or political entities. "War is nothing else but that time wherein the will and intention of contending by force is either by words or actions sufficiently declared" (Hobbes, *De Corpore Politico*, 1650, P. I, c. 1, sec. 2.) "War is that state in which we prosecute our rights by force" (Vattel, *Droit des Gens*, 1758, iii, c. i, sec. 1.) "War is that state, in which men constantly exercise acts of indeterminate violence against each other" (Martens, *Précis du Droit des Gens*, 1788, VIII, c. 2, sec. 1.) "War is the state of nations among whom there is an interruption of all pacific relations, and a general contention by force, authorized by the sovereign" (Manning, *Commentaries on the Law of Nations*, 1839, p. 96.) "Public War is a state of armed hostility between sovereign nations or governments" (Lieber's Code, 1863, Art. 20, U. S. Rules of Land Warfare, 1914, Art. 24.) "War is the relation which exists between states or between political entities when there may lawfully be 'a properly conducted contest of armed public forces'" (Wilson and Tucker, *International Law*, 1922, 8th ed., p. 235.)

³⁷ "War is a properly conducted contest of armed public forces" (Gentili, *De Jure Belli*, I, c. 2, 1588.) The qualification "properly conducted" (*justa*) seems to convert the simple idea of contest into the legal idea of procedure. "Wars are no massacres and confusions, but they are the highest trials of right when princes and states shall put themselves upon the justice of God for deciding their controversies as it shall please Him to put on either side" ([1625] Bacon, Works, Montague ed., Vol. 5, p. 384.) "War is a contest between independent parties by way of force or deceit, for the purpose of pursuing their rights." (Bynkershoeck, *Questiones Juris Publica*, 1737, I, c. 1.) See also definitions by Phillimore and Holland, *supra*, note 15.

submission. The second is the oldest and the usual lay use of the term war, generally given first place in dictionaries, but it lacks precision, since a dispute may gradually merge from methods of complete amity through displays of force, interventions and reprisals, to war in the material sense. The third meaning is commonly accepted by legal writers, and is thus distinguished from the second by Grotius:³⁸ "Cicero says that war is a contest or contention carried on by force. But usage applies the term, not to an action, but to a state or condition: and thus we may say, war is the state of persons contending by force, as such." Writers express this conception by various abstract terms signifying existence in time such as state, condition, relation, situation, and it can be emphasized by use of the term "state of war." The fourth meaning, as has been noticed,³⁹ is not commonly used by modern jurists who look upon war as an event rather than a legal procedure. War in itself does not legally settle a dispute. It may do so in fact but in law the dispute is settled by a declaration or treaty ending or following the war..

For purposes of precise discussion, (the first and third meanings, "an act of war" and "a state of war," seem best to embody the essence of war in the material and legal senses respectively.) The characterizations legal or illegal can properly be applied only to acts which proceed from responsible beings, not to events which exist from uncontrollable natural causes.⁴⁰ Thus we are presented with the paradox that war in the legal sense is an event neither legal nor illegal, while war in the material sense is an act at least capable of legal characterization.

The ambiguity in the term war indicates the doubt which exists in many minds as to whether war does ordinarily proceed from responsible action or from natural causes, a doubt reflected in many of the comments on responsibility for the World War.⁴¹ If wars are in fact inevitable, as many assert them to be, they are rightly to be classed with volcanic eruptions, tornadoes, droughts and similar phenomena which, however destructive, can not be attributed to responsible beings subject to legal control.⁴²

The state of science and philosophy has a great deal to do with the ordinary attribution of events to the categories of responsible acts or natural

³⁸ Grotius, *op. cit.*, I, c. 2, par. 2. See also Vattel, III, c. 1, sec. 1; Fenwick, *op. cit.*, pp. 428-429; Moore, *International Law Digest*, Vol. 7, p. 153.

³⁹ *Supra*, note 15.

⁴⁰ *Supra*, note 5.

⁴¹ See summary of much of this literature in article by Harry Elmer Barnes, *Current History Magazine*, May, 1924, Vol. 20, p. 171, and comments by ten historians and political scientists thereon, *ibid.*, June, 1924, Vol. 20, p. 452.

⁴² Extreme complexity of causation would have the same effect from the standpoint of placing responsibility as inevitability. "No war, strictly speaking, is inevitable; but in a storehouse of high explosives it required rulers of exceptional foresight and self-control in every country to avoid a catastrophe." Gooch, *Recent Revelations in European Diplomacy Journal of the British Institute of International Affairs*, Jan. 1923, p. 29. See also Gooch *History of Modern Europe*, pp. 534-559.

events. The Middle Ages, with a philosophy which viewed all nature as the manifestation of design, was inclined to trace all events to responsible agency. Animals, trees or even stones and weapons were subjected to legal responsibility for injury to human beings, and events for which no agency within the power of the court could be held responsible were called "acts of God." Someone or something was to blame for all ills which occurred.⁴³

The modern scientific habit of thought has tended in an opposite direction. The field of natural facts has expanded at the expense of responsible acts until we find criminologists and psychiatrists who would abandon the conception of crime altogether and hold that the "criminal," even though sane in the usual sense, is so controlled by heredity and environmental influences that he could not have acted other than he did. He should be treated by the social service agency or the physician, not committed to the jailer.⁴⁴ Parallel, however, with this tendency to relegate the term "responsibility" to obsolescence, has developed through applied science an actual capacity of man to control future phenomena. Precautions against infection in an operation which would have been perfectly normal before Pasteur, might now subject a physician to criminal responsibility.⁴⁵ While scientific theory has narrowed the field of responsible action, applied science has widened it.

Thus with regard to war, (the early jurists steeped in medieval habits of thought sought to impute legal responsibility for wars with the distinction between just and unjust causes for war.⁴⁶) It may also be noticed that the employment of standards of responsibility for state action similar to those

⁴³ Holmes, *Common Law*, pp. 7-11; Holland, *op. cit.*, p. 154; Gray, *Nature and Sources of the Law*, 1916, secs. 100-110; Evans, *Criminal Punishment and Prosecution of Animals*, N. Y., 1906.

⁴⁴ Bernaldo DeQuiros, *Modern Theories of Criminality*; Ferri, *Criminal Sociology*, 1917, pp. 288 *et seq.*; Parmelee, *Criminology*, 1918; McConnell, *Criminal Responsibility and Social Constraint*, 1912; Darrow, *Crime, the Cause and Treatment*, 1922.

⁴⁵ Salmond, *Jurisprudence*, p. 436; Wharton, *Criminal Law*, sec. 89.

⁴⁶ War was regarded as a legal procedure in ancient Rome when sanctioned with due formality by the Fecial College (Walker, *History of the Law of Nations*, p. 47). The Christian fathers found some difficulty in reconciling war with certain passages of the Bible, but doubts were set at rest with the publication of Gratian's *Decretal* (about 1140) in which Isidore of Seville (*Etymologie*, 600 A. D.) was followed in holding that war is not necessarily sinful and in distinguishing just from unjust wars. A series of writers followed with the similarity of treatment characteristic of medieval writing. They generally distinguished seven sorts of war, five unjust and two just, with a definition of the latter from Cicero through Isidore. "*Quod geritur ex praedicto, aut rebus repetitis aut propulsandorum hostium causa.*" See T. E. Holland, *Studies in International Law*, pp. 40-58, who discusses the work of Legnano, *De Bello, de reprisalis et de duello*, 1360; Henry of Gorceum, *De bello justo, circa* 1450; Franciscus Victoria, *Relectiones, circa* 1540; Dominicus Soto, *De justitia et jure, circa* 1550; Vasquez, *Controversum illustrium, libri tres, circa* 1560; Pierino Belli, *De re Militari et de bello*, 1563; Balthazar Ayala, *De Jure et Officiis bellicis*, 1581 and others. The latter writes, "*Justa bella sunt jure gentium indicta*" (I, c. 2, sec. 3). Gentilis, who added much to the work of his predecessors, thinks that in last resort recourse may justly be had to war

of the criminal law was not unreasonable in an age when absolute monarchs had a real discretion in making war.⁴⁷ But as absolute monarchs became subject to constitutional restrictions, as international relations became more ramified, as the complexity of the antecedents of war became better realized, and as the scientific habit of looking for natural causes rather than for responsible agents gained ground among men of learning, (international jurists despaired of allocating and judging responsibility for war, and viewed wars as events, the conduct of which could be regulated but the origin of which could not be judged.) Historians, statesmen, moralists and propagandists continued to discuss the responsibility for and the justice of wars, but lawyers gave it up.⁴⁸

During the past century, inventions and social organization, together with growth in population, have increased international trade, travel, communication and coöperation, with a consequent stimulation of humanitarian and cultural interest in other peoples, economic interest in their prosperity and political interest in their stability.⁴⁹ But, on the other hand, these same factors have perfected instruments of destruction, enlarged the possibility

but "*Si necessitas non substat, belle esse justum nec possit.*" (*De Jure Belli*, 1588, I, c. 3.) Grotius devotes a chapter to the question whether war is ever just, with the conclusion "*De jure naturali, ergo, quod et gentium dici potest, ratis constat eo bella non omnia improbari.*" (1625, I, c. 2, par. 4.) Not content with this, he proves at length that war is not prohibited by divine law as declared by the old or new testament or by the church. Pufendorf thinks "Peace is a state proper to human nature as such; since it ariseth from a principle peculiar to mankind above the brutes; whereas, war flows from principles common to both." But nevertheless man is entitled by nature "to defend himself or to recover his right by force when he cannot obtain it by easier means. When men are forced to fight, however, it is not because they are to make war perpetually, but that they may enjoy a lasting peace and security for the future." *Jus Naturale et Gentium*, 1672, viii, c. 6, sec. 2. Vattel's opinion is similar. (*Droit des gens*, 1758, iii, cl. 3.) All of these writers realized that this view required them to distinguish just from unjust wars, which they did on the ground both of formally just commencement and conduct and of substantively just causes. Among modern writers, Halleck follows the same practice with liberal citation from the classics, but apparently with the implication that the question is one of ethics rather than of law. (*International Law*, 4th ed., Chaps. 15, 16.) See also Kent who says, "An injury either done or threatened, to the perfect rights of the nation, or of any of its members, and susceptible of no other redress, is a just cause of war." (Abdy ed., 1866, p. 164). Martens, *Précis de droit des gens*, makes a similar statement (1788, viii, c. 2, sec. 3), as does Woolsey, *Introduction to the Study of International Law*, 1860, sec. 116. For the usual attitude of modern writers see *supra*, note 15.

⁴⁷ Grotius considers authorization by the sovereign an essential to just war, and sovereignty vested in a single individual as normal, though he recognizes the possibility of variation "according to the laws and custom of each nation." *Op. cit.*, I, c. 3, par. 4-8.

⁴⁸ *Supra*, note 16.

⁴⁹ This movement can be measured by comparison in successive periods of the number of public and private international organizations, agreements and settlements. See Potter, *Introduction to the Study of International Organization*, tables given on pages 190, 216, 226, 272, 291, 296, 323, and discussion of causes, p. 308. See also, Wright, this JOURNAL, Vol. 13, pp. 242-247.

mobilizing whole populations, and increased the points of friction between nations, with the result of rendering preparation for war more expensive, war scares, if not wars themselves more frequent, and wars more destructive, particularly of civilian life and property.⁵⁰ The result has been an increasing demand for the elimination of war, a demand of which statesmen and international lawyers have taken cognizance, particularly during and since the World War.⁵¹

The past century has also witnessed advances in juristic thought. In the Middle Ages men thought there existed "a perfect body of law, immutable eternal, the work of God, not of man." Legislation was necessary only to reform procedure so that this law might be more perfectly applied.⁵² Later, "natural law" was attributed, not to God, but to the nature of man, to geography and environment, to history and culture, but was equally beyond human control.⁵³

⁵⁰ This tendency can be measured by comparison in successive periods of military appropriations and average size of standing armies and navies in time of peace, and number and cost of wars in expenditures and destruction of life and property. Such statistics are exceedingly difficult to compile and compare and are apt to be unreliable. See, however, report of Massachusetts Commission on Cost of Living, *The Waste of Militarism*, and the *Staggering Burden of Militarism*, World Peace Foundation pamphlets, Oct. 1912, April 1921, August 1921; Wright, *Limitation of Armament*, Institute of International Education, Syllabus 12, Nov. 1921; Anderson and Hershey, *Handbook of Diplomatic History, 1870-1914*, Washington, 1918, pp. 468-474; Krehbiel, *Nationalism, War and Society*, 1916, pp. 62, 70-74, 257; Bodart, *Losses of Life in Modern Wars*, 1916; Dumas and Vedel-Petersen, *Losses of Life Caused by War*, 1923; Moore, *International Law and Some Current Illusions*, pp. 8-13. The latter gives figures indicating that recent wars have not destroyed so large a proportion of the population of belligerent countries as earlier and ancient wars, but absolute losses have tended to increase, not only for equal times but for wars as a whole. The fact that wars have tended to be shorter perhaps indicates the more rapid exhaustion of belligerents. On the tendency of modern warfare see, Rear Admiral Rodgers, U. S. N., this JOURNAL, Vol. 17, pp. 1-14; Col. J. F. C. Fuller, D. S. O., *The Reformation of War*, N. Y., 1923; Will Irwin, *The Next War*, N. Y., 1921.

⁵¹ Every great war has been followed by an extensive agitation for the elimination of war, and the relative strength of such demands is difficult to measure. Comparison of the proportionate amount of peace literature, and of the number and cost of private and public organizations devoted to this object, seem not to be available. Studies of the evolution of international organization and the extent of government participation in and delegation of functions to such organization seem to justify the statement given. See Sayre, *Experiments in International Administration*, Chap. 1; Potter, *op. cit.*, pp. 438-510; Fried, *Handbuch des Friedensbewegung*, 1913; Krehbiel, *op. cit.*, Chaps. 16-19, 28-30, giving extensive bibliographies.

⁵² Maitland and Montague, *A Sketch of English Legal History*, 1915, p. 103.

⁵³ Natural law is here used in its widest sense as distinguished from artificial law in that its source is nature rather than human purpose. (See Ulpian, *Jus. Inst.* I, 2). It has also been distinguished from positive law in that its sanction is nature rather than enforcement by political authority (Holland, *op. cit.*, p. 31), and from civil law in that it is universal rather than limited to a special country. In this sense it is equivalent to *jus gentium* as understood in ancient Rome. (Cicero, *De Off.* 1, 23.) See also Pollock, *Introduction to the History of the Science of Politics*, 1908, p. 110.

This conception has to a considerable extent broken down before the assaults of the analytical jurists, the historians and the sociologists. Law has come to be looked upon as an artificial contrivance which not merely clarifies intuitions of justice but moulds society in accordance with social policies. Doubtless, the legislator must take cognizance of existing customs, interests and moral convictions of those subject to the law, but, nevertheless, with careful integration into the system and well conceived agencies of enforcement, he may make laws which will gradually modify them. Law can be an agency of progress as well as of stability.⁵⁴

Modern jurists consequently have insisted that legal responsibility is an artificial creation which need not be related to subjective intuitions of fault or psychological investigations of intention, if better results can be obtained otherwise. According to Dean Roscoe Pound, modern systems of private law tend to enforce "reasonable expectations arising out of conduct, relations and situations" rather than "willed consequences of declared intentions" or "reparation for willed aggression."⁵⁵ Modern legal thought would therefore recognize the possibility of artificial criteria to determine legal responsibility for initiating wars—criteria which can be applied without attempting to solve insoluble historical disputes as to who is morally responsible for a particular war.

Thus with an insistent stimulus to action and new jural instruments offering a prospect of success, jurists have set about the task of controlling war. They have been met by the problems: (1) of devising criteria of responsibility for beginning war, (2) of devising criteria for determining justifiable acts of self-defense, and (3) of devising adequate agencies of enforcement.

⁵⁴ Pound, *Interpretations of Legal History*, 1923, pp. 11, 152 *et seq.*; Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, 1905, pp. 41-47; Maitland and Montague, *op. cit.*, pp. 161-162; Wright, *Legal Nature of Treaties*, this JOURNAL, Vol. 10, p. 707, Oct. 1916.

⁵⁵ Pound, *Introduction to the Philosophy of Law*, 1922, p. 189. The artificiality of the concept of legal responsibility is well illustrated by the efforts of the analytical jurists to define liability so as to include the various kinds of intentional wrong, negligence, and liability without fault known to the law, and to explain the relation of the act in question to the total causation of the effect attributed to it. See Holland, *op. cit.*, pp. 105, 149-151, 327; Salmond, *op. cit.*, pp. 401-403, 410-411.

EDITORIAL COMMENT

THE IMBRIE INCIDENT¹

On Friday, July 18, 1924, during a religious ceremony, Major Robert Imbrie, American vice-consul at Teheran, was attacked and done to death by a fanatical mob that misunderstood or resented his presence. The outrage was peculiarly atrocious in that the mob after severely wounding Consul Imbrie pursued him into the operating-room of the hospital where he had been taken for relief and there pounded him to death.

The local police appear to have joined in the attack, or at any event not to have made any effectual resistance to the mob, and the responsibility of the Persian Government was in consequence more seriously involved. The Government of Persia recognized this responsibility at once and took action to fulfil her obligations as a sovereign state. Teheran was placed under martial law; measures were taken to prevent the publication of newspapers inciting to hatred against foreigners; the Meglis, the Persian Legislature in open session, declared its sorrow and profound horror at the crime and urged the government to pursue the investigation relentlessly.

From the cabled report of Mr. Kornfeld, American Minister at Teheran, it was learned that Khalosi Zodeh, a leading Mullah, with two hundred persons suspected of participating in the crime, had been arrested. In the same cable Minister Kornfeld further reported that the Minister for Foreign Affairs and representatives of the Crown Prince had called at the American Legation to express their condolences, and that he had asked the Persian authorities for a precise statement of the facts concerning Major Imbrie's death. Minister Kornfeld stated that Major Imbrie was buried on July 19, with full military honors, and that the diplomatic corps had made to the Persian Government a strong protest relative to the commission of the crime.

On July 21, the Persian Chargé d'Affaires, Mr. Bagher M. Kazemi, acting under the instructions of his government, called upon Mr. Grew, Acting Secretary of State in the absence of Mr. Hughes, and read the following official communication: "The Persian Government assures the United States Government that it will do everything in its power to fulfil its duties in a diplomatic sense. The Persian Government is appalled by the disaster and promises every aid to apprehend the slayers of Major Imbrie."

The Department of State in a communication to the press made public

¹The discussion of this incident is based upon the facts as given out by the Department of State and the cabled press reports published in the *New York Times*.

the formal note of protest telegraphed to Minister Kornfeld on July 25 for presentation to the Persian Minister for Foreign Affairs. After the note was dispatched the Department learned of the attack upon the widow of Major Imbrie in the streets of Teheran and sent further instructions to Minister Kornfeld to make adequate oral representations on this account, but the nature of these supplementary instructions was not made public.

The text of the note of protest as communicated to the press was as follows:

I am instructed to inform you that the Government of the United States views with the gravest concern the killing in Teheran of its consular representative, Mr. Robert W. Imbrie.

Immediately after learning of the circumstances under which Mr. Imbrie had been killed and his attendant, Mr. Melvin Seymour, seriously injured, your Excellency's Government was advised, through its representative in Washington and through the American Legation in Teheran, that my Government would expect adequate reparation to be made and prompt punishment meted out to those responsible for the killing and to those who by their failure to act contributed to make possible this incident unprecedented in recent times.

My Government has now instructed me to supplement the representations already made.

It was felt proper that these representations should be made only in the light of a full knowledge of the events which had transpired and when it might be possible to fix the responsibility and to gauge the reparation which would be adequate to the situation.

The facts of the case appear sufficiently established in so far as all essential elements are concerned. The American consular representative in Teheran, accompanied by an American citizen, was brutally assaulted in the streets of Teheran, in broad daylight. In endeavoring to escape from their assailants, they entered a carriage and drove a considerable distance, when they were again assailed and the tragedy occurred.

The American consular representative would appear to have had no reason to anticipate danger from visiting the particular place where he was the victim of the unjustified assault.

It is most regrettable that it is necessary to add to this statement that the facts before my Government do not indicate that the police or military authorities made any adequate effort to protect the American consular representative, and there appears, in fact, to be evidence which it is believed the Persian Government will itself desire to investigate most vigorously, that certain military elements participated in the assault.

My Government desires nothing which the facts of the case do not fully justify. It approaches the situation with no wish to offend a friendly Government or to require punitive damages. It is, however, insistent that full reparation should be made, that punishment should be meted out to the guilty, that assurances be given and enforced of adequate protection for the lives of American citizens and that the safety of its officials in Persia should be guaranteed.

My Government does not wish at this juncture to indicate in detail the particular steps which would be considered adequately to meet

the situation resulting from the killing of Mr. Imbrie. The Persian Government has already stated on its own initiative that redress for the wife of the victim would be made. This redress should also extend to the covering of the expenses which might be incurred in connection with the dispatch to a Persian port of an American man-of-war to receive the body of Vice Consul Imbrie, which should be accompanied while on Persian soil by a suitable Persian military guard of honor and rendered appropriate honors at the time of leaving Persian territory. It is further considered that an appropriate guard should, if requested by the Legation, be furnished by the Persian Government both to the American Legation and to the American Consulate; such guard to be maintained pending the notification to the Persian Government that it is no longer considered necessary.

My Government has further instructed me to reserve, for a later communication, further suggestions as to the action which may be considered necessary to meet the exigencies of the situation. I am instructed by my Government to add that the character of any additional statement which might be made to the Persian Government would be materially influenced by the action which that Government may immediately take on its own initiative to make such further redress as may be appropriate, particularly in punishing those responsible for the crime and in giving full publicity to the action taken.

The maintenance of relations between countries is primarily dependent upon the according of adequate protection to their respective nationals and to their official representatives. Diplomatic usage, treaty provisions, in fact the very provisions of the treaty between the United States and Persia of 1856, emphasize this view. This Government feels that the continuance of its diplomatic and consular representation in Persia will be dependent upon the action which the Persian Government may take in this case to vindicate this fundamental principle of international law and this foundation upon which international intercourse is predicated. It confidently awaits such action to supplement the steps already taken by the Persian Government. It cannot overemphasize the seriousness of the view which is taken of the present situation.

In reply the Persian Government on July 29, addressed the following note to Minister Kornfeld and made public through the Persian press an account of the promised reparation:

Pursuant to my letter No. 9458 I beg to advise your Excellency of the views of the Imperial Government in response to your note of July 25, 1924.

As your Excellency has observed, the Government and people of Persia are extremely chagrined and depressed by the lamentable incident of Friday, July 18, and have expressed their feelings to that effect in numerous instances and in various ways.

You state that Excellency's Government does not desire to approach the situation in such manner as to offend my Government. The Persian Government regards this as an evidence of the unequivocal good will and friendship of the American Government, and requests your Excellency to be good enough to communicate its thanks and appreciation to the authorities of your great Government.

As I stated in the course of my letter No. 9155, the Imperial Government is making extreme efforts in pursuing and punishing the persons who caused and perpetrated the killing of Mr. Imbrie, and it will not hesitate to take any kind of steps in this connection. Up to the present time the action of the Government in pursuing this object has proceeded with rapidity. Many of the persons who were either suspected or were accused of committing the crime have, regardless of the class to which they belong, been arrested. Other persons who participated will shortly, as a result of the vigorous efforts of the Government, be apprehended and the culprits will receive drastic punishment after their trial.

I also feel it again necessary to give your Excellency the assurance that the Imperial Government is extremely desirous of repairing the above-mentioned regrettable incident.

Considering the official status of Mr. Imbrie, the deceased, the Persian Government agrees with the suggestion of the United States Government that the body of Mr. Imbrie be accorded honors during its transportation. The Persian Government is concerned over this matter to such an extent that it would ship the remains of the deceased Consul to America aboard a Persian man-of-war if Persia possessed one. But inasmuch as it is unable to do so it agrees to pay the expenses which may be incurred by the dispatch of an American man-of-war to receive the remains.

Your Excellency has already been advised verbally and in writing as to the Persian Government's desire to relieve and console the widow of the deceased Consul.

As to the security of American citizens, and particularly American official representatives, the Persian Government has always considered and will continue to consider this as its positive duty and gives assurance that it will by no means hesitate to fulfill this duty. It goes without saying that if the Honorable Legation deems it necessary the guards of the American Legation and Consulates will be increased.

I also beg to advise your Excellency of the fact that the Imperial Government has always made, and will make it in the future, an essential point to respect the principles of international law and the treaty on which the relations of the two Governments rest. I am hopeful that in view of the good will of the two parties and the Imperial Government's great desire to repair the incident and fulfill the points that are suggested there will remain no ground whatever for any anxiety on the part of the United States Government.

In accordance with the understanding reached through this exchange of notes, arrangements were made for the U. S. S. *Trenton* to proceed from Naples to Bushire, on the Persian Gulf, to receive there on August 25, from the Persian officials and guard of honor, the body of Major Imbrie, Vice-Consul of the United States at Teheran. In a telegram dated August 23rd, the American Minister at Teheran reported that the Persian Government had advised the Legation of its acquiescence in the payment of an indemnity of \$60,000 to Mrs. Imbrie. After the arrival of Major Imbrie's body, memorial services were held in Washington, on September 29th. The President, the Secretary of State, and other high officials of the government

were present. The Persian *Chargé d'Affaires* officially represented his government at the ceremony. On October 1st the Persian Government delivered to the American *Chargé d'Affaires* in Teheran a check for \$60,000 which will be turned over to Mrs. Robert W. Imbrie. In a despatch received the following day the Department of State was informed of the execution by a firing squad of Private Morteza of the Persian Army for the slaying of Major Imbrie. Charges which brought about the sentence of Morteza specified that he had "incited the mob to kill Vice Consul Imbrie, having disregarded the orders of Second Lieutenant Mustapha Khan and non-commissioned officer Mohamed Ali Khan who three times ordered him to desist and pulled him out of the mob and having nevertheless persisted in attacking." The execution was performed in the presence of the entire garrison of the Kasr Kadjar barracks.

From the point of view of international law the adequate redress so promptly furnished by the diligence of the Persian Government may well serve as an example of a substantial compliance with each requisite step of the procedure recognized by the practice of states as appropriate in such cases. The first step was the immediate action of the government and local authorities to prevent further outrages. The police regulations adopted in this instance consisted of the declaration of martial law and the bridling of the press. The next step was to conduct a thorough and impartial investigation of the facts. In some instances such an investigation is left to a commission composed entirely or in part of officials of third states.

While these measures are in course, or even before they have commenced, the local government should at the earliest opportunity formally express its regrets through the diplomatic channel and offer to make such redress as the investigation when completed should indicate as due. In the present instance this apology was appropriately given the widest significance and emphasis through publicity in the local press and by means of other expressions of popular or official sorrow and sympathy for the bereaved.

A formal and prompt demand for redress follows from the injured government. The nature of the redress demanded must of course be made conditional upon the facts as disclosed by the investigation. The protest or demand for redress should avoid any intimation of duress; no state is justified in assuming that a sister state will not of its own volition make adequate redress, and any intimation at this stage that constraint may be employed is a gratuitous insult which would go far toward justifying a refusal to make redress, which then takes on the aspect of a national humiliation. But when, as in the present instance, the government is weak and unable always sufficiently to police its territory in order to fulfill its obligations of a sovereign state, a strong statement of the gravity of the situation and the probable consequences of the outrage may be of assistance and enable the responsible government to take the steps requisite to afford adequate redress.

Viewed in this light, the strong terms of the American note were in no sense unfriendly to Persia. International law, based upon practice which is necessarily harmonized with the needs of international intercourse, can hardly refuse to justify language which helps to prevent a rupture of diplomatic relations by indicating the danger of such an event.

The formal acceptance of the reasonable terms of the demands for redress and compliance therewith completed the procedure and closed the incident.

Since the international law rules of procedure for the settlement of differences between states are based on the actual practice of states, these rules may be expected to prove effective except when one or other of the parties cherishes unavowed designs of aggression. The rupture or threat of rupture of diplomatic relations at the very moment when the appeasing and peaceful mission of diplomacy is most needed should ordinarily be condemned. But should the personal immunity of the representative be violated or his presence used to insult his nation, he can no longer act in his capacity of an agent of contact and serve a peaceful purpose. The cessation of relations is then the only course.

The protest of the diplomatic corps at Teheran is worthy of remark and is a happy instance of the growing tendency toward international coöperation to secure the observance of international law. Such action supports the protests of the injured state and at the same time emphasizes the gravity of the situation. The local government furthermore finds it easier to justify before its own people whatever expiatory measures it may adopt. After the diplomatic corps has lodged a vigorous protest the representatives of the Powers will be in a much better position to intervene when necessary to prevent a demand for redress from being turned into a pretext for aggression.

Article II of the treaty of friendship and commerce of December 13, 1856, referred to in the exchange of notes provides:

The Ambassadors or Diplomatic Agents whom it may please either of the two high contracting parties to send and maintain near the other shall be received and treated, they and all those composing their missions, as the Ambassadors and Diplomatic Agents of the most favored nations are received and treated in the two respective countries; and they shall enjoy there, in all respects, the same prerogatives and immunities.

and the first paragraph of Article III provides:

The citizens and subjects of the two high contracting parties—travellers, merchants, manufacturers, and others—who may reside in the territory of either country, shall be respected and efficiently protected by the authorities of the country and their agents, and treated in all respects as the subjects and citizens of the most favored nation are treated.

But treaty stipulations of this nature are generally no more than the record of existing international law obligations. Their function is to serve

as evidence and to facilitate the proof of the right or obligation rather than to create it. To quote the phrase of the note of protest, the provisions of the treaty of 1856 "emphasize" the existence of the international law obligation to afford adequate protection to the respective nationals and representatives of the high contracting parties.

The preamble of this same treaty describes the Shah as: "His Majesty as exalted as the planet Saturn; the Sovereign to whom the sun serves as a standard; whose splendor and magnificence are equal to that of the skies; the Sublime Sovereign, the Monarch whose armies are as numerous as the stars; whose greatness calls to mind that of Jeinshid; whose magnificence equals that of Darius; the heir of the crown and throne of the Kayanians; the Sublime Emperor of all Persia." It is interesting to compare this hyperbole of 1856 with the humble confession of the Persian note that "the Persian Government would ship the remains of the deceased consul to America aboard a Persian man-of-war if Persia possessed one." But by her diligent efforts to make amends and scrupulously to fulfil her international law obligations Persia in 1924, honors herself truly in deed.

ELLERY C. STOWELL.

REORGANIZATION AND IMPROVEMENT OF THE FOREIGN SERVICE

By an act of Congress passed at the last session the United States has followed the example of a number of European states since the war and provided for the reorganization of its foreign service. The act was passed after long discussion and it embodies recommendations made by various recent Secretaries of State, including Mr. Bryan, Mr. Lansing, Mr. Colby, and Mr. Hughes; by Mr. Wilbur J. Carr, formerly Director of the Consular Service and now an Assistant Secretary of State; by the Hon. John W. Davis, former ambassador to Great Britain, and other persons interested in the reform of the foreign service. The author of the act was the Hon. John J. Rogers of Massachusetts, to whose deep interest and untiring zeal the passage of the law was mainly due.

For a long time complaints had been multiplying that our foreign service was no longer equal to the demands made upon it, nor its organization in harmony with the admitted standards of efficiency. Some tentative efforts had already been made at different times in the direction of improvement, but they by no means met the situation. By an executive order issued by the President in 1905 it was provided that vacancies in the office of secretary of embassy or legation should thereafter be filled by transfer or promotion from some branch of the foreign service or by appointment after examination of qualified persons from outside the service. This order marked the beginning of a much needed reform, but being only an executive order it was of course binding only on the President who issued

it. The order was followed by the act of 1906 for the reorganization of the consular service and in 1909 by another act providing for the reorganization of the Department of State.

These measures, while introducing some improvements, left others still unprovided for. In the first place, the foreign service was criticized for its inflexibility resulting from the rigid separation of the diplomatic and consular services, and for the lack of uniformity of salaries as among officials of corresponding rank in the two branches of the service. Thus a consul-general of Class I received a salary of \$12,000 a year while a counselor of embassy, the corresponding grade in the diplomatic service, received a salary of only \$4,000, which was the maximum salary for diplomatic officials below the rank of minister. Salaries in the consular service ranged from \$12,000 down to \$2,500, whereas those in the diplomatic service below the rank of minister ranged from \$4,000 downward to \$2,500. In consequence mainly of this disparity of pay, transfers of officials from one branch of the service to the other were impracticable, although it not infrequently happened that by reason of the special aptitude of an official in the one branch for service in the other, such transfers were highly desirable. Furthermore, the existing scale of salaries in the diplomatic service was so low that only persons possessing independent means were in fact eligible to appointment. This situation was not peculiar to the United States, for in England until very recently no one was eligible to appointment in the diplomatic service who did not possess a private income of £400 a year. The virtual limitation of appointments to men of wealth had long been the subject of criticism. President Taft in his address before the National Board of Trade on January 26, 1916, denounced the system as inconsistent with the ideals of democracy and declared that it was "the purest demagoguery."

Other complaints were: inadequate allowances for traveling expenses, illiberal rules regarding leaves of absence, especially for officials in tropical and unhealthful countries, and the lack of retiring allowances for superannuated persons in the foreign service.

The new law undertakes to remove or attenuate these defects. It amalgamates the diplomatic and consular services into a common service, hereafter to be known as the "Foreign Service of the United States," and provides for a new and uniform salary scale with a substantial increase, the maximum being \$9,000 instead of \$4,000 as formerly. The two services are thus put on an interchangeable basis so that transfers may be made from one to the other whenever the interest of the service may be promoted thereby. The act further provides that all persons in the permanent foreign service below the grade of minister shall be appointed after examination and a suitable period of probation and may be assigned to duty at the discretion of the President either in the diplomatic or the consular branch of the service. It is also provided that they shall be subject to promotion on the basis of merit. For this purpose the Secretary of State

is required to report to the President from time to time with his recommendations the names of foreign service officials who by reason of efficient service have demonstrated special capacity for promotion to the grade of minister, as well as the names of officers and employees in the Department of State who have demonstrated special efficiency. It will be noted that these provisions relative to appointment after examination and promotion on the basis of merit do not apply to the higher posts such as ministers and ambassadors. These posts still remain as political appointments and presumably the incumbents will be changed whenever a new administration controlled by a different political party comes into power. In this respect the American foreign service will still be distinguished from that of most other countries. But legislative sanction, for the first time, of the principle of appointment after examination, of officials in the lower posts, and of their promotion on the basis of merit, even to the post of minister, represents progress for which we may well be thankful.

While no provision is made for increasing the salaries of ministers and ambassadors, the President is authorized to grant to diplomatic missions representation allowances out of any money appropriated from time to time by Congress.

Provision is also made for liberal allowances for traveling expenses and subsistence for foreign service officers who are detailed for duty away from their posts, for leaves of absence with traveling expenses of officers and their immediate families (especially liberal provisions for those residing at "unhealthful ports"), and for the establishment of a retirement and disability fund for officers in the service. This fund is created in part by a 5 per cent deduction from the basic salary of all foreign service officers eligible to retirement and partly by a contribution from the treasury of the United States. It is stated that eventually the cost to the government for the maintenance of the fund will be about 28 per cent, while the service itself will defray the other 72 per cent. The age of retirement is fixed at 65 years and the beneficiary must have rendered at least 15 years' service, but the President may in his discretion retain the officer on active duty for a further period not exceeding five years. The amount of the annuity depends upon the length of service and the annual basic salary for the ten years next preceding the date of retirement. In the case of retirement for disability, the fact of disability shall be determined by the report of a qualified physician or surgeon designated by the Secretary of State.

Finally the act abolishes the position of Director of the Consular Service, the salary of which is made available for an additional Assistant Secretary of State, the office of which is created by the new law.

The enactment of this law represents the most important advance yet made in the direction of elevating the foreign service of the United States to a level such as it occupies in other countries and such as has long been demanded by the best public opinion in this country. Unfortunately,

however, the provisions of the law, as stated above, apply only to the lower posts in the service, except as regards representation allowances. The positions of minister and ambassador lie outside the scope of the law. It is true that the Secretary of State is required to report to the President the names of secretaries, counselors and others who have demonstrated special capacity, for promotion to the grade of minister, but naturally there is no assurance that they will be promoted. Whether they will or not depends on the President. It is to be hoped that our Presidents in the future will see the advantage not only of promoting specially qualified experienced secretaries to ministerial posts, but also of rewarding competent ministers by advancing them to ambassadorships.

J. W. GARNER.

NATIONAL SECURITY AND INTERNATIONAL ARBITRATION.

The most significant feature of the development of international arbitration during the past generation has been the gradual widening of the field of controversies to which the obligation to arbitrate should apply. The plan of a comprehensive agreement to arbitrate all disputes without restriction seemed at the time of the First Hague Conference the ideal of a far-distant millennium, and to many, indeed, not even an ideal, but an unwarranted restraint upon rational progress. At the moment of present writing (September 17) the plan seems to have come within the range of practical possibilities and the Assembly of the League of Nations is discussing ways and means of giving it definite actuality.

So long as agreements to arbitrate were concluded only in the presence of a concrete dispute which diplomacy had failed to settle, no question was raised as to the nature of the national interests involved in the dispute. A boundary controversy could be arbitrated if the parties saw fit to do so, and the vital or non-vital character of the interests at issue did not figure in the agreement. Nor was there any question as to the "justiciability" of the matter under dispute. Any matter was justiciable when the parties had agreed to settle it by arbitration and had determined the principles to be applied by the arbitrators.

It was only when nations began to conclude the so-called "general treaties of arbitration," looking to the arbitration of future disputes, that the question arose as to the character of the cases that it might be feasible to agree in advance to arbitrate. Quite clearly, in a community of nations organized as it then was and advocating the principles which it then advocated, it would not do for a state to commit its most important interests to the keeping of a tribunal not under its direct control. When the proposal of a general treaty of arbitration was made at the First and again at the Second Hague Conference there was no thought that the obligation to

arbitrate should extend to more than a definitely limited group of cases. It will be remembered that the list of arbitrable matters voted upon by the First Commission of the Conference of 1907 related to interests of a negligible character, and that the advocates of compulsory arbitration welcomed the list only as evidence of the acceptance of a general principle. The opposition of Germany and Austria-Hungary defeated even this first step, and the conference was obliged to content itself with the famous *voeu* admitting "the *principle* of compulsory arbitration" and recommending that certain disputes, in particular those relating to the interpretation of treaties, *might* be submitted to compulsory arbitration without restriction.

Failing the conclusion of a general arbitration treaty at The Hague, the individual Powers resorted to separate treaties between themselves, following the example of the South American states during the last quarter of the nineteenth century. With but few exceptions these agreements all fell short of an absolute obligation. The Root treaties of 1908, after the model of the Anglo-French treaty of 1903, embraced questions of a legal nature or questions relating to the interpretation of treaties, but made exception of matters affecting the vital interests and the honor of the contracting parties. The proposed Taft treaties widened the field considerably by including differences "justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity," leaving non-justiciable matters outside the obligation.

With the establishment of the League of Nations and the appointment, in pursuance of Article 14 of the Covenant, of a committee to formulate a plan for the Permanent Court of International Justice, the old question arose as to the cases to which the obligation to arbitrate should extend. The Advisory Committee of Jurists drafted a plan in which the court was given jurisdiction over four groups of legal questions; but this proposal was rejected by the Assembly of the League, and in place of it an article was adopted limiting the jurisdiction of the court to the cases which might voluntarily be submitted to it. Provision was, however, made that individual states might accept the jurisdiction of the court as obligatory in respect to the four specified classes of cases. While the optional clause has been signed by a number of the smaller Powers, even in regard to them there still remain excluded from the obligation assumed any questions which might be regarded as "political."

What is at the root of the unwillingness of the leading states to pledge themselves to arbitrate all future disputes without exception? What are the "vital interests" which they feel it would be unwise to submit to the judgment of an arbitral tribunal or of a permanent court? The answers to these two questions will put to the test all the projects to "outlaw war" which have been so widely discussed of recent months. For it is clear that the conditions which have led states to provide a loop-hole of escape from the obligation to arbitrate are also the conditions which keep them from

renouncing altogether the right to make war should a particular emergency arise. The whole history of modern arbitration has been the history of attempts to outlaw war by narrowing the field within which it could be resorted to. Progress has been made by gradual elimination of the cases which appeared to involve the least sacrifice of national interests. The last step, the absolute outlawry of war, arbitration without exceptions of any kind, is the most difficult of all, in that it involves a new organization of international society and doubtless new principles of international relationships.

Foremost among the interests which states are intent upon safeguarding is obviously the protection of their national existence. To that end all foreign policies are primarily directed and whatever bears upon it, even remotely, assumes a gravity beyond its immediate importance. The case has been the same whether the component elements of the state have been homogeneous or heterogeneous in respect to national aspirations. Under the old order in existence in 1914 the protection of its national existence was left to each state and the community at large assumed no responsibility for the maintenance of peace. Under such circumstances no state could be expected to agree to turn over to an arbitral tribunal, however impartial its composition, a controversy in which matters bearing upon its self-preservation might be in any way involved. The United States, for example, regarding the Monroe Doctrine as bearing upon its national security, would have unhesitatingly rejected any suggestion of arbitration if an adverse decision of the tribunal might have the effect of weakening that barrier against attack.

But the right of national existence, in a community lacking any principle of collective responsibility and having no agencies for the maintenance of peace, became a very complex right, with ramifications extending into many aspects of national life. The size of a state's armaments for self-protection was a matter which the state could not permit to be questioned before an international tribunal, although it might appear to a neighboring state that armaments maintained for alleged self-defense had an aggressive character. Thus Germany would have promptly rejected in 1911 any suggestion of arbitrating the question whether the growing size of her fleet constituted a menace to Great Britain. Again, cases could occur in which the conditions of government in one state constituted a nuisance to another state and thereby affected its national peace. Thus the United States would have been unwilling to commit itself in advance to accept the decision of an arbitral tribunal on the point of determining whether the time had come to put an end to the nuisance of misgovernment in Cuba. Thus, also, Austria-Hungary rejected the suggestion of mediation in the exercise of its right to call Serbia to forcible account for the agitation which was being carried on in that country against the integrity of its legal dominions.

Moreover, the defense or conservation of national existence has been

intimately tied up with the extension of national commerce and the development of national industry. Here the problem assumes, doubtless, its most difficult form. In a community of nations organized (or unorganized!) on the basis of individual self-help the development of the economic life of the state is intimately connected with the power of the state to defend itself against attack. Material prosperity thus becomes, in the case of the leading Powers, a condition of national independence. But the material prosperity of the modern industrial state requires the possession of the necessary raw materials as well as markets for the sale of manufactured products, both of which extend the problem of national self-preservation far beyond the boundaries of the country. Thus Germany and France would have been unwilling to commit themselves in advance to arbitrate such a question as their relation to Morocco, each believing that the objects involved in the dispute, control over the mineral and other resources of the country, had a vital bearing upon their industrial welfare. Nor would Great Britain have considered for a moment the acceptance in advance of an obligation to arbitrate such a question as the demand of Germany for a "place in the sun," if the decision of the court were to infringe in any way upon Britain's control over her colonies.

How far would the assumption, such as is now being discussed at Geneva, by the nations as a body of a collective responsibility for the maintenance of peace and the establishment of agencies for its effective administration remove the chief obstacles to a general agreement of obligatory arbitration? The question cannot be answered with finality. Undoubtedly, if the leading states could be convinced that adequate protection for their national independence could be secured to them by an international guarantee of the League of Nations, they would be the more readily inclined to submit many questions to arbitration which in the past have been regarded as excluded under the caption of "vital national interests." Many of the smaller states have already come to believe that their best protection rests in the resort to arbitration rather than to the decision of arms, and their signature of the optional clause of the statute of the Permanent Court would indicate a willingness to go even further towards closing the loop-holes in their obligation to arbitrate. There still remains the obstacle that the Great Powers and a number of the smaller ones have interests which cannot be included under the heading of national security, in the sense of the proposed guarantee of the League of Nations, and yet which they consider too vital to leave to the decision of an international tribunal.

Justice is, after all is said, an essential condition of the adoption or permanence of an adequate system of law, and it is clear that under the complex conditions of international life which have developed out of the aggressive nationalism of the past there are many cases where the existence of injustice must make it hard for a state to bind itself to accept the *status quo* as a permanent condition of things. Perhaps the experience of the alternative

of war may help to restrain some hands. More hopeful, however, is the promise that the Assembly of the League of Nations may prove to be a public forum for the expression of alleged national wrongs and bring the power of public opinion to right grievances which have only a moral, not a legal basis. To speak in familiar terms, statute law must remedy the defects of the common law. It will be observed that the Covenant of the League of Nations leaves it optional to a state to resort to the regular procedure of arbitration or to bring its case before the Council or the Assembly of the League. Doubtless the latter procedure will be followed in cases where these political, as distinct from legal, questions are at issue. But it would lead us too far afield to speculate how far the League may in time undertake to right individual wrongs by the adoption of general international conventions. Sufficient for the day is the problem in hand. Security comes first; then other aspects of justice.

A like answer is to be given to the question whether certain matters, such as the regulation of national commerce or the exclusion of alien immigrants, which are now regarded by international law as "domestic questions," but which actually do cause friction between nations, may not in time be brought under the control of a general rule of law. At present, if a case involving such matters were to be presented to the Permanent Court, it could only dismiss the suit with the statement that the defendant could not be disturbed in the performance of a clearly legal act because of its injurious effect upon another state. There is, therefore, no need of a reservation of "domestic questions" from the jurisdiction of the Permanent Court or of the League. It is sufficient that certain questions be understood to be domestic ones, and the matter is settled. A future generation may be left to determine whether what has been a domestic question in the past may not henceforth be an international one.

C. G. FENWICK.

EXTRATERRITORIALITY IN CHINA

The present issue of the JOURNAL contains two enlightening articles dealing with the question of the abolition of extraterritoriality in China,¹ written respectively from the American and the Chinese viewpoint.

It is interesting and encouraging to note the general similarity of the approach of the two authors to their subject. Whatever their differences as to the causes and history of extraterritoriality, they are in agreement not only in holding that it is an unfortunate anomaly which ought to be abolished, but that it can be abolished in a manner which will conserve the rights of all concerned and benefit both the foreigner and the Chinese.

¹ "Extraterritoriality in China," by Charles Denby, *supra*, pp. 667-675; "Foreign Jurisdiction in China," by N. Wing Mah, *supra*, pp. 676-695.

They are further in agreement that abolition must be gradual and that no definite period for its accomplishment can be fixed since the necessary prerequisite of the abolition of the present extraterritorial system is the establishment of a Chinese judicial system capable not only in theory but in actual practice of administering even-handed and enlightened justice both to the Chinese and to the foreigner. As Mr. Mah observes: "Although humane and scientific codes, and properly organized tribunals, are indispensable instruments, . . . what China most urgently needs are competent administrators of the law." Neither Mr. Mah nor Mr. Denby venture to estimate how long it is likely to take to secure such administrators and actually put them to work. As Mr. Mah says: "It is entirely problematical as to when the native Chinese judges will command confidence and respect, especially in view of the transitory changes now taking place and likely to continue in China for some years to come;" while Mr. Denby observes: "Intelligently handled there is no inherent reason why we should not have after some decades a creditable administration in China of laws adapted to the requirements of Chinese and of the foreigners there resident."

Mr. Mah and Mr. Denby, however, are again agreed that a beginning should presently be made upon the gradual process of abolishing extraterritoriality, and further that the first step is the formulation and promulgation of satisfactory judicial codes by China. Says Mr. Denby:

There would be needed a code founded on foreign judicial practice and covering the needs of foreign litigants of whatever nationality; then a system of courts to carry out the execution of this code; then a time of probation with foreign expert judicial cooperation in training the magistrates of these courts.

Mr. Mah's suggestions as to a *modus operandi* lie along the same lines, although they are more detailed. They are as follows:

To sum up, it would seem that the following principles should govern the disposition of the abolition of extraterritorial jurisdiction in China: (1) the adoption by China of the necessary legal codes, to wit, a civil, a criminal, and a commercial code, a code of civil procedure and a code of criminal procedure; (2) the reorganization of the existing Chinese courts, particularly in localities where there are treaty ports; (3) the establishment of "mixed" courts as an integral part of the regular judicial system, conferring upon foreigners the full benefit of Chinese laws; (4) the appointment as Chinese judges and procurators of foreigners learned in the law and experienced in administration irrespective of nationality, and at the unfettered discretion of the Chinese Government; (5) the provision for gradual and progressive relinquishment of extraterritorial rights by the treaty states corresponding to the ascertained fitness of Chinese judiciary to exercise jurisdiction over foreigners; and (6) the conclusion of an international agreement embodying the solemn promise of the treaty states to surrender their extraterritorial rights immediately upon the fulfillment by the Chinese judiciary

of certain elemental and progressive tests of judicial proficiency, the agreement to come into force upon ratification of the major treaty states on the one hand, and China on the other.

The plans of other competent experts such as Professor Willoughby and Mr. M. T. Z. Tyau, which are quoted in Mr. Mah's article, however they may differ in detail, are of the same general nature, except that Mr. Tyau has attempted to suggest a time limit within which the gradual abolition of extraterritoriality might be completed.

There is, however, a further suggestion which it is believed is not referred to by Mr. Mah or Mr. Denby, or by the experts from whom they quote, which it is submitted points out a second step in the gradual process of doing away with extraterritoriality which should follow hard on the first step as to which the experts seem to be in agreement.

This proposed second step is the prompt putting into force, in every treaty court, of the new Chinese codes as soon as they have been examined and found satisfactory by the treaty Powers.

While the new Chinese codes are in various states of advancement, they all could, and doubtless would if there were adequate inducement, be rapidly perfected and made ready for formal promulgation. These codes could then be submitted to the various treaty Powers, preferably through the International Commission of Inquiry provided for by the Washington Conference when it shall be constituted. They should then be examined by the commission, not of course with a view to ascertaining whether or not their provisions are such as would have been recommended to China by the respective Powers, but whether they constitute a reasonable legal system under which foreigners could properly be asked to live and transact their business in China. It is probable that these codes would be found in general to measure up to this standard, at least with such amendments as might readily be suggested by the commission and accepted by China. The codes having been formally accepted by the treaty Powers and promulgated, the suggestion then is that by agreement of the treaty Powers they be promptly put in force in every treaty court in China. This suggestion first came to the attention of the writer in 1919, in an article by Mr. H. G. W. Woodhead, not a lawyer but a layman, long editor of the *Peking and Tientsin Times*.

In the course of a very interesting article upon the abolition of extraterritoriality, published in March, 1919, in connection with the discussions then going on in China in anticipation of the decisions to be reached in regard to China by the Peace Conference at Paris, Mr Woodhead said:

The problem as it presents itself to us is this: a variety of Foreign Tribunals—some, such as the British Supreme Court, and the American Court for China, presided over by experienced Judges; others, far more numerous, presided over by Consular officials—endeavour to administer the laws of their respective nations, as modified to suit local needs, in the Treaty Ports. The result cannot be considered satisfactory. Cases

are within our recollection in which three criminals of different nationalities, associated in the same crime, had to be tried by three different courts, the law, and the penalty inflicted, being different in each case. And one can imagine the complexity of a civil action in which (say) a Japanese sued a British subject in connection with property in American hands. If Chinese Tribunals cannot be trusted to administer justice to foreigners, is not the logical alternative that all foreign Tribunals in this country should administer *the same law*—Chinese law? Providing acceptable Civil and Criminal Codes are forthcoming, that, it seems to us, would be the first step in the solution of the problem of extraterritorial jurisdiction. Not only would it simplify legal proceedings in which foreigners are concerned, in this country; it would found precedents and furnish a model, for the Chinese Courts of the future. It would abolish the complexities arising from the conflict of laws of the various Treaty Powers.²

Mr. Woodhead summarized the remainder of his plan for the abolition of extraterritoriality as follows:

The adoption of this plan would result in the abolition of Extraterritoriality being divided into three phases: 1. Chinese laws (approved by the Treaty Powers) administered in Foreign cases by Foreign Judges, with Chinese Judges as spectators; 2. Foreign and Chinese Judges jointly trying such cases with equal powers, in accordance with Chinese law; 3. Chinese Judges trying such cases, with Foreign Judges acting as Assessors. The transition from Extraterritoriality to China's complete judicial emancipation would thus be accomplished by stages, during which a competent Judiciary could be trained, and sound precedents established. The disappearance from the Bench of the Foreign Judge, when it came, would not then involve a complete break in the Judicial administration, but merely the continuation of a system established, and built up, with foreign aid. The Chinese legal codes would have been tested, and remedied where found wanting.

It will be observed that these latter suggestions do not differ in principle from those of Mr. Mah and Mr. Denby, but it is submitted that Mr. Woodhead's suggestion, that once the Chinese codes are perfected they be immediately put into force in every foreign jurisdiction in China, is a fresh contribution to the subject under discussion which deserves the careful consideration of all those interested in the abolition of extraterritoriality in China, and particularly of the International Commission of Inquiry to be appointed under a resolution of the Washington Conference, with a view to recommending such improvements in China's administration of justice "as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality".³

One great argument for the suggestion here made is that if it is sound it can be carried out with no greater delay than is necessary to perfect the new codes and secure their acceptance by the Powers, and the proposed

² The Peking Leader, March 6, 1919.

³ Senate Document 126, 67th Congress, 2nd Session, p. 514.

International Commission of Inquiry provides convenient machinery for securing the approval of the Powers.

Further, there is no doubt that if China were given reason to hope that such a suggestion would be carried out it would be a great encouragement to exert every effort for the speedy perfection of the new codes. And once the plan was carried out and the codes were actually in operation in the treaty courts, it would again be a great encouragement and stimulus to the Chinese to show that they were capable of administering these same codes in their own courts. In other words, it is submitted that it would have a happy effect in putting an end to the present psychological impasse in which China is waiting for some tangible proof of the readiness of the Powers to abolish extraterritoriality before making serious efforts to improve her judicial system, and the Powers are awaiting serious efforts on the part of China to improve her judicial system before making any definite move in the direction of the abolition of extraterritoriality.

Moreover, it would at one blow and without waiting "for some decades," do away with one of the most serious, if not the most serious, objection to extraterritoriality from the point of view of the foreigner, namely, "the diversity, uncertainty and inadequacy of the laws applied by the consular courts of the various treaty states," which, according to Mr. Mah, constitutes "the first important indictment" against extraterritoriality. Once the codes were put into effect in all the treaty courts the foreigner when he goes to China would go there to live under the laws of China just as when he goes to England he goes there to live under the laws of England. The only difference would be that the laws of China would be administered by his own judicial officers. Thereafter, if a foreigner became involved in litigation in China his rights and his duties would be measured by Chinese law. It would no longer be true, as it is today, that his rights as a plaintiff vary according to the laws of the defendant's nationality while his duties are fixed by the laws of his own country.

Finally, as Mr. Woodhead has pointed out, the carrying out of this suggestion would not only not interfere with the carrying out of a comprehensive plan for the complete abolition of extraterritoriality, but it would be a great assistance in that direction.

If it be objected that the consular and other treaty courts would be called upon to administer a law with which they are unfamiliar, the answer would seem to lie first in the general advantages of the plan, and second, in the fact that many, if not most of the consular officers who preside in the consular courts of the various Powers are not lawyers and that their success or failure as judges in the future, as in the past, will depend upon their general good judgment and administrative ability rather than upon any technical learning in the law. And so far as the American Consular Service is concerned, the success which has been attained through the good sense and general high administrative ability of our consular officers in administering

American law in China as it is today, *i.e.*, a confused congeries of federal statutes, English common law, and judicially adopted territorial codes, gives every reason to believe that our consular officers would do at least as well in administering any reasonable scientific code.

With respect to courts such as the United States Court for China and H. B. M.'s Supreme Court for China, the experienced judges who preside in these courts could be trusted either to have or to speedily acquire the requisite facility in handling the Chinese codes which, like the Japanese codes, will doubtless owe much to the civil law and the codes of continental Europe.

In conclusion the prediction is ventured that in the very nature of things extraterritoriality in China is bound to go sooner or later as a result of evolution or revolution. The step suggested in this editorial is put forward as a modest installment on the evolutionary plan.

WILLIAM C. DENNIS.

TREATIES CONFERRING RIGHTS IN MANDATED TERRITORIES

On July 2, 1924, the President proclaimed two treaties signed with France on February 13, 1923, relating to rights in the French mandated territories of Cameroons and Togoland.¹ A similar treaty was made with Japan on February 11, 1922,² and Secretary of State Hughes has announced the policy of securing "fair and equal opportunities" in all the mandated territories.³

The first feature to strike attention is the year and a half interval between signature and proclamation. Apparently *The Federalist's* confidence that the constitution would permit greater "dispatch" in treaty-making has not been fully justified.⁴

The two treaties are practically identical. They recite the terms of the French mandates, "the United States consents to the administration" of the territory by France; the United States is accorded "the rights and benefits" enjoyed by members of the League of Nations under Articles 2 to 9 of the mandates; vested American property rights in the territories is not to be impaired; a duplicate of the annual report to the mandatory commission is to be sent to the United States; American rights under the treaty are to be unaffected by modifications of the mandate unless the United States shall have assented; and extradition treaties with France shall apply to the territories.

These treaties differ from the Japanese treaty of February 11, 1922, in some additions to the preamble, in the omission of provision for special

¹ Treaty Series (U. S.), Nos. 690, 691; Supplement, this JOURNAL, pp. 189 and 193.

² U. S. Treaties, 1910-1923, Vol. 3, p. 2723, and comments by C. N. Gregory, this JOURNAL, Vol. 15, pp. 419-427, Vol. 16, pp. 248-251.

³ Address at Philadelphia, Nov. 30, 1923, *Current History Magazine*, Jan. 1924, p. 579, and address at New York, Jan. 23, 1924, this JOURNAL, Vol. 18, p. 243. See also notes appended to Japanese treaty, Feb. 11, 1922, U. S. Treaties, Vol. 3, p. 2728.

⁴ *The Federalist*, No. 64 (Jay), No. 70 (Hamilton), Ford ed., pp. 429, 467.

protection to American missionaries, and of course, in the omission of the special articles with regard to American cable and radio rights in Yap. Furthermore, the Japanese treaty provided that "existing treaties between the United States and Japan shall be applicable to the mandated islands," whereas the French treaties provide only for such application of "extradition treaties and conventions." Thus Articles 7 and 12 of the French consular convention of 1853, which confer most favored national treatment with regard to consuls and national treatment with respect to private real and personal property rights and inheritances is not applicable in the Cameroons and Togoland. Treatment equal to that of Frenchmen in respect to personal and property rights and other privileges are, it is true, assured to nationals of League Members by Article 6 of the mandates in question, and, by the present treaties, to American citizens, but other privileges (apart from extradition) not thus specified in the mandates, which Americans now enjoy in France under treaty, would not be enjoyed by Americans in the mandated territories. In this respect, therefore, the United States gets less than it did under the Japanese treaty.

It should be noticed that the Japanese mandated islands fall in Class C under the League Covenant, to be "administered under the laws of the mandatory as integral portions of its territory," subject to specified safeguards for the benefit of the natives. Thus Japan probably has the right to extend all treaty privileges of foreign nations to them.⁵ The covenant, however, does not appear to give so extensive powers to mandatories of Class B territories, like the Cameroons and Togoland. There might, therefore, be a question of the right of France as mandatory to extend all treaty privileges of foreigners to the territory. In fact, however, Article 9 of the mandates for these two territories does give the mandatory the right to administer them "as an integral part of his territory."

From the standpoint of international law the most interesting feature of these treaties is: (1) the assumption that American consent is necessary for French administration of the mandates and (2) the assumption that France can grant permanent rights with respect to the territories.⁶

QUINCY WRIGHT.

THE LEAGUE OF NATIONS' REPORT ON THE UNIFICATION OF THE LAW OF NEGOTIABLE INSTRUMENTS

The Conference of Financial Experts held at Brussels in September, 1920, recommended to the League of Nations as part of its scheme of financial rehabilitation "that the activities of the League might usefully be directed towards promoting certain reforms," the first of which was that

⁵ Question might be raised whether, without the consent of the Council, she could exercise such sovereign powers as treaty-making with respect to mandated territory.

⁶ Wright, "Sovereignty of the Mandates," this JOURNAL, Vol. 17, 699-700.

progress should be made toward the unification of the laws of the various countries relating to bills of exchange and bills of lading. The International Chamber of Commerce and other trade bodies have likewise strongly supported a resumption of initiative in this direction, which was interrupted by the war. As a result, the Economic Committee of the League of Nations, acting in coöperation with the Government of the Netherlands, and with the approval of the Council and the Assembly, appointed four legal experts to report their opinions upon the attitude now prevailing in the various countries of the world toward the work of the two Hague Conferences on Negotiable Instruments and also as to whether further action toward unification was likely to meet with practical success. The following highly qualified experts were charged with the task: Sir Mackenzie Chalmers, well known as the author of the English Bills of Exchange Act of 1882; the late Professor David Josephus Jitta, formerly Councillor of State of the Netherlands; Professor Franz Klein, of Austria, and Professor Lyon-Caen, the well-known French authority on commercial law.

It will be remembered that the unification of the law of bills and notes had advanced to the stage of the signing of a convention by representatives of twenty-seven nations in 1912. Two conferences at The Hague, in 1910 and in 1912, respectively, elaborated a *règlement* applicable to bills of exchange and promissory notes, which the nations signatory to the convention undertook to adopt as part of their national legislation. The convention failed of ratification mainly by reason of the war. Ratification by certain nations was delayed by the unfavorable attitude of Great Britain and the United States toward adhering to any scheme of unification which would involve material changes in the laws of their own jurisdictions. At the time of the conferences, it was thought possible to arrive at a scheme of unification in which countries of the Anglo-American sphere of jurisprudence might participate, but objections, partly of policy and partly constitutional, have induced both governments to withhold any hope of legislative approval.

Of course the Federal Government would not be likely to engage itself to recommend the adoption of any law which would substantially vary the system of the Uniform Negotiable Instruments Law elaborated after much labor and now in force in nearly all the States. Great Britain has never seriously considered the abandonment of the system developed through the Common Law and the Law Merchant as represented by its Bills of Exchange Act of 1882. It has, however, declared its willingness to consider such non-fundamental amendments as would aid in the process of unification.

The report of the experts of the League of Nations was presented to the Council in 1923, and its recommendations approved, though no action has yet been taken to execute the plan. The report recommends the acceptance of the convention and *règlement* of 1912, not as a finality, but as a

basis for further discussion at a conference to be called at The Hague to which all nations shall be invited and which shall be organized by the Government of the Netherlands acting in coöperation with the League of Nations. The report reflects an important change of opinion in so far that the inability of the Governments of United States and of Great Britain to hold out any hope of ultimate ratification on their part is no longer regarded as an impediment in the path of progress by the other nations. As the Uniform Negotiable Instruments Law varies so slightly from the system in force in Great Britain and in the British Colonies and Dependencies, the adoption of a uniform code for all other countries would leave only two great systems prevailing throughout the world, the Anglo-American and what, for lack of a better term, may be called the Continental System. This in itself would be a great advance and would make for certainty and stability in international and financial transactions. However, the committee of legal experts insists upon the importance of having the presence and coöperation of representatives of the Anglo-American group, with a view to coördination wherever possible. Sir Mackenzie Chalmers is of the opinion that the rules adopted in 1912 were already a closer approach to the Anglo-American system than any of the codes of the several countries of Continental Europe or of Latin-America. A "progressive assimilation" should, therefore, not be unthinkable, and the work of the proposed conference would then be one of consolidation of similar systems, with a tendency to approach the Anglo-American rules wherever practicable. In the words of the committee of experts, "It is wise to harvest that which is ripe and to allow to ripen that which is not."

ARTHUR K. KUHN.

DANISH LEGISLATION PROTECTING MINORITIES

An admirable illustration of both just and generous treatment of an alien minority is to be found in a brief pamphlet recently published by the Danish Ministry of Foreign Affairs, entitled: *The German Minority in South Jutland—A Summary of the Danish Legislation.*

It will be remembered that the Treaty of Versailles provided that the boundary between Germany and Denmark should be fixed in conformity with the results of a plebiscite to be taken in two separate zones, the more northern of which only was transferred to Denmark on that basis. Unlike the case of Poland, Czechoslovakia, and other states to which alien minorities were assigned, Denmark was not required by the Treaty of Versailles to enter into a separate treaty of guarantee defining the protection to be accorded to the German minority. This was due, the present pamphlet informs us, to the liberal character of the Danish legislation already in existence, which applied to all Danish subjects irrespective of language or nationality. This legislation was based upon the Danish Constitutional Act and

offered guarantees in respect to religious liberty, education, freedom of the press, and freedom of association and of assembly. Moreover, the system of proportional representation afforded a minority ample opportunity to secure just representation in the Danish Parliament. There are, therefore, in Denmark no minority laws in the strict sense, although a number of the older laws have been supplemented or modified to meet the special conditions arising from the transfer of northern Schleswig (South Jutland) to Denmark.

It is in the field of education that the chief difficulty in respect to the position of minorities arises. The Danish laws provide that in towns the elementary schools shall be divided into two sections, in one of which Danish is the language of instruction and in the other German, parents being given free choice between the two sections. Where Danish is the language of instruction a fixed number of lessons weekly is given in German, and *vice versa*, although it is not obligatory upon parents to have their children attend these lessons. In the country districts and boroughs the language of instruction depends upon the language of the particular school district, provision being made as in the towns for special lessons in the language which is not the language of instruction. The administration of these provisions is in the hands of local school committees elected by proportional representation, subject to the higher control of the national Ministry of Education. Thus there is a practical as well as a legal guarantee against unfair treatment. In addition, private schools may be conducted and, when conforming to the same standards of education, they may enjoy the same state grants as are given to the national schools. In respect to higher education provision is made that the older pupils may bring their elementary schooling to a normal close without changing the language of instruction. This is done by establishing special classes in German for those students who express a desire to finish their instruction in that language.

Owing to the fact that the German minority in Denmark shares the religious belief of the rest of the population, the protection of freedom of worship is limited to securing facilities for the conduct of religious services in German in the Danish national churches. In respect to legal procedure before the courts and the administration of the law in general, the fact that Danish is with few exceptions everywhere understood and spoken by the German minority makes it possible to have the proceedings conducted normally in Danish; resort being had to a public interpreter only where the party concerned gives an assurance that he is not familiar with Danish.

The minorities problem in Denmark is, indeed, a relatively simple one and does not involve many of the features which make the problem so difficult of solution in Central and Southeastern Europe. Nevertheless, the liberal character of the legislation put into effect in Denmark reflects credit upon the statesmanship of Denmark's rulers and upon the democratic spirit of the people.

C. G. FENWICK.

CURRENT NOTES

FOREIGN SERVICE REORGANIZATION ACT

It is a remarkable fact that although this country has been in existence something like one hundred and forty years, there has never previously been but a single act of Congress which provided for general reorganization of the foreign service. That law was enacted in 1856—nearly seventy years ago—and has naturally become as archaic as ordeal by battle.

When, on May 24 last, President Coolidge signed the bill for the reorganization and improvement of the foreign service of the United States, he took the final legislative step in an effort that has been waged for seven years to put the diplomatic and consular agencies of the United States upon the highest possible plane of modern commercial and diplomatic efficiency.

"Why," asks the average American, "is the quality, either of personnel or of service rendered by our foreign officers, a vital matter to me?"

Chambers of Commerce, under the powerful leadership of the United States Chamber of Commerce, have recently been telling him why. Following up their explanation the great commercial bodies of the country have urged him to get behind the proposal for congressional reorganization of the foreign service. It is in an attempt to answer the queries as to the real value of such legislation from the standpoint of the practical man of affairs that I summarize the purposes and the proposals of the new act.

The foreign service of a nation is its first line of defense. Before armies and navies are requisitioned, before the decision as between peace and war has been arrived at, diplomacy has been diligently seeking a way out of the controversy. Skilled diplomacy is the greatest protector of peace. Bungling diplomacy is the most fertile cause of war. The weapons of diplomacy do not include engines of war or battleships. Diplomacy is man power, or, more accurately, the brain power of man power, and nothing else. A sagacious nation should strain every nerve, or go to almost any length, to secure the services of those among its population possessed of the maximum ability, of wide education and of long experience in the arts and practices of this highly skilled labor. As Walter Hines Page put it, "We should train the most capable male babies we have from the cradle."

The cost involved in our whole foreign service is, relatively speaking, a trifle. The burden upon the Treasury for the operation of the State Department, of the diplomatic service and of the consular service for the fiscal year which ended June 30, 1923, was \$454,000.

I have recently been furnished the figures for the first half of the fiscal year 1924; that is, the figures for the period which ran from July 1, 1923, until January 1, 1924. They show that even the small burden upon the

Treasury for 1923 has been wiped out and that for the fiscal year 1924 the entire foreign service of the United States, including the administration thereof in Washington, was maintained without the necessity of raising a single dollar from the taxpayers of the United States. In fact, when detailed figures are available, the combined agencies will probably show more than a million-dollar profit. Of course, this showing results from the fact that the United States has taken the position, and I think has wisely taken it, that travellers and business men, whether Americans or foreigners, who seek to receive special service at the hands of our diplomats or consuls abroad should render appropriate payment for the service so rendered.

The new reorganization act will increase the budget for the foreign service by about \$345,000 yearly. Does this additional item alarm any thoughtful man? When one considers that our foreign service is far-flung throughout the seven seas and that officers are maintained in 457 posts throughout the world, the additional commitment seems trifling indeed. The other day I read a description of a large coast defense gun on its way from Watervliet Arsenal in New York to its emplacement in Boston Harbor. It was stated that that one gun, with its carriage and emplacement, would cost something like two million dollars, four times and more the annual additional cost of giving us what will be the best foreign service which the United States has ever had, instead of the service of the recent past which has been merely a pretty good foreign service. I am not underestimating, I am sure, the value of the coast defenses of the nation. We must have proper defense; but if we can have the best foreign service that the country can provide, we are doing vastly more toward peace insurance than by multiplying the munitions of war.

Let us now consider some of the respects in which the new law seeks to achieve improvement.

(1) Always hitherto the diplomatic side of the service and the consular side have occupied separate, watertight compartments. There has been a minimum of contact, and practically no personnel exchange. Yet in our modern world almost every international question is partly diplomatic and partly commercial. Take such questions as tariffs, coal, seals, oil, and a score of others, and you have a mixed question involving national policies, diplomatic negotiations, and commerce. The more business a man knows the better diplomat he will be and the more international politics he knows the better consul he will be. On the other hand, a poor consul may quite conceivably make an excellent diplomat and, conversely, a poor diplomat make an excellent consul. The measure in question authorizes for the first time free interchange between the two sides of the service as the interests of the United States make appropriate.

A young man of 25, let us say, seeks to embark upon a diplomatic career. He has just been graduated from college and passes an excellent examination for the diplomatic corps. There can be no sounder practical education for

such a young man than to turn him for a few years into a consulate, where for the first time he will learn business methods, and where he will learn that worth-while foreign service is not exclusively an opportunity to shine in society. He will be a better man, a better American, and a better foreign service officer all his life because of the background of his experience in a consulate. The provision for interchange, then, is our first plank.

(2) The salary scale on the consular side has run from \$3,000 up to \$12,000. The maximum for diplomatic secretaries has been \$4,000; and yet no one would wish to assert that the work of our counselor of embassy in London or Paris during the war was less valuable than that of the consul general. Still less would anyone wish to assert that a proper reward for the training and ability which the position required was represented by any such salary as \$4,000. Suppose under the new interchangeability plan it was desired to send the consul general at London to be counselor at the embassy at Paris, a position certainly not less in importance. Hitherto this would have involved a reduction in salary from \$12,000 to \$4,000. Manifestly such a situation would be a complete bar to the exchange.

For reasons of fairness, in the first place, and in order to make the interchangeability feature workable, in the second place, the new law assimilates the two salary scales. It does this by creating a single "Foreign Service of the United States," in which every diplomat and consul is assigned to an appropriate class. The salary scale of the new service thus created ranges from \$9,000 down to \$3,000. A counselor of embassy and a consul general of the first class both reappear as foreign service officers of class 1 at a salary of \$9,000. Abroad, however, the diplomat and consul will continue to be known as before and in accordance with the practice of other nations. Our new amalgamated foreign service is simply a domestic arrangement for purposes of salary classification and the ready facilitation of the interchange features. The average salary increase is about 15 per cent or 16 per cent.

I doubt whether any thoughtful inquirer will feel that a maximum salary of \$9,000, which comes only to mature men after years of admirable service, is too high, especially when we consider the financial demands upon our representatives abroad. Many will say that the scale is too low; but when we reflect that the Secretary of State himself receives a salary of but \$12,000 we must pause before undertaking to give what would be a really compensatory scale of salaries for men in the foreign field.

(3) John W. Davis told the Committee on Foreign Affairs that when he represented the United States in London, though living unostentatiously, with exchange in his favor and at a time when the financial demands upon him were at a minimum, he was nevertheless obliged to spend from his own pocket from \$50,000 to \$60,000 a year. "Now, of course," he said, "that is not fair." Yet it is true of practically every man representing our country abroad today.

We propose for the first time in the new law to make provision for at least a

portion of the expenses of representing this country worthily abroad. Our ambassadors and ministers do not entertain because it gives them pleasure, but because to do their duty by their country they must see people. If they stay at their desks they are little better than useless hermits. If they are entertained they must accept. And a man cannot always be entertained and never entertain.

Our principal rivals in world trade, the British, recognize this. They pay their ambassador at Washington a salary of \$12,000. We pay our ambassador to London \$17,500. But that is all he gets to defray every kind of expenditure. The British ambassador at Washington, on the other hand, has a suitable embassy building furnished him for his residence. In addition, he receives a representation allowance which brings his total emoluments up to just under \$100,000.

The yearly appropriation of a suitable sum for representation allowance, for the first time contemplated in the new law, will be an excellent investment for the United States and it will be "fair."

The bill does not provide any increase in the actual salaries of our ambassadors or ministers. At a later date I hope it may be possible for Congress to embark upon a general program of acquiring embassies, legations and consulates in the cities of the world where these are most needed and would be most useful. But this program is not carried in the recent law.

(4) Our army and navy officers are retired on three-quarters pay, without any contribution by them. Our judges are retired on full pay without contribution. Our civil service employees are retired, subject to the requirement that they shall have paid in two and one-half per cent of their salary during their active service. There seems no reason why our foreign service officers only should be excluded from a retirement system. The new law provides such a retirement arrangement predicated, however, upon a contribution of five per cent of salary. The contribution will make the retirement almost self-supporting. The contribution of the government will be 28 per cent and that of the men themselves 72 per cent.

Such a program will tend to keep in the service the best men who otherwise would feel compelled to provide for themselves and their families in old age by seeking more lucrative private employment. The plan also insures the retirement, without unfairness to them, of the superannuated who have given their life to the government, but who have passed the time of usefulness.

There are many other provisions in the law but perhaps I have said enough to indicate its theory. In a few words it is this: The broader the basis of selection of personnel, the better should be the caliber of that personnel; and the more attractive the service becomes, in respect to salary, opportunities for interesting service and retirement arrangements, the broader will be the selection basis.

JOHN JACOB ROGERS.

INSTITUTE OF POLITICS AT FURMAN UNIVERSITY

An Institute of Politics has been conducted at Furman University, Greenville, South Carolina, during the first two weeks of August. This Institute has, according to the announcement, been frankly modeled on the plan of the Williamstown Institute, but the lecturers and round table leaders have been Americans. The session has been very successful, considering the late announcement of its opening.

THE THIRD PAN AMERICAN SCIENTIFIC CONGRESS

On September 17, 1924, the Department of State announced the delegates who have been appointed to represent the United States in each of the nine sections of the Third Pan American Scientific Congress to be held at Lima, Peru, from December 20, 1924, to January 6, 1925. Dr. James Brown Scott, the Honorary Editor-in-Chief of the JOURNAL, has been appointed the delegate of the United States in the seventh section dealing with private, public and international law. Dr. Leo S. Rowe, the Director of the Pan American Union, has been appointed chairman of the delegation. The Honorable Charles Evans Hughes, President of the Society, has designated Dr. Scott and Dr. Rowe to represent also the American Society of International Law at the Congress.

MEXICAN CLAIMS COMMISSIONS ORGANIZED

General Claims Commission

The General Claims Commission, created under the General Claims Convention between the United States and Mexico, which was proclaimed on March 3, 1924, was organized in the City of Washington, on Saturday, August 30, 1924, at 10 o'clock A. M. At this formal organization meeting the Honorable Charles E. Hughes, Secretary of State of the United States, was present, and delivered an address of welcome to the Commission. The others present were: Hon. Manuel C. Tellez, Chargé d'Affaires of the Embassy of the United Mexican States; Dr. C. van Vollenhoven, the Presiding Commissioner; Hon. Joseph R. Baker, United States Commissioner; Hon. Genaro Fernandez MacGregor, the Mexican Commissioner, and the Joint Secretaries, Hon. Thomas A. Simpson, for the United States, and Hon. José Romero, for Mexico. Hon. Henry W. Anderson was present as Agent of the United States, accompanied by his Assistant, Hon. Clement L. Bouvé. Hon. Benito Flores, represented the Mexican Government as its Agent. Addresses of welcome were delivered by the various officials. Credentials were duly examined and accepted, and the Presiding Commissioner then declared the General Claims Commission to be duly organized in conformity with the provisions of Articles I and II of the General Claims Convention.

Informal conferences were subsequently held, at which drafts of the Rules

of Procedure were considered. At a formal meeting on September 4, 1924, the Rules of Procedure were adopted as of that date.

Within a few days following, Dr. van Vollenhoven and the various representatives of Mexico departed from Washington, to return in time for the next formal meeting of the General Claims Commission in Washington, on March 25, 1925.

Special Claims Commission

The Special Claims Commission, created under the Special Claims Convention between the United States and Mexico, which was proclaimed on February 23, 1924, was organized in the City of Mexico, at 11 A. M., Friday, August 22, 1924. Hon. Aaron Saenz, the Mexican Secretary of Foreign Relations, and the Hon. H. F. A. Schoenfeld, Chargé d'Affaires for the United States Embassy at Mexico, attended the conference. The full Commission, constituted by Dr. Rodrigo Octavio, Presiding Commissioner; Hon. F. Gonzalez Roa, Mexican Commissioner, and Hon. Ernest B. Perry, the United States Commissioner, were present, as were the Joint Secretaries, Hon. Noble Warrum, for the United States, and Hon. José Aspe Suinaga, for Mexico. Hon. Henry W. Anderson represented the United States as its Agent, with him being the Assistant to the Agent, Hon. Clement L. Bouvé. The Mexican Government was represented by Lic. Aquiles Elorduy, as its Agent, and Lic. Julio Garcia, Assistant Agent.

Hon. Aaron Saenz, opened the meeting with an address of welcome. Dr. Octavio responded, and addresses were also made by the other officials. After the examination of credentials, the Presiding Commissioner declared the Special Claims Commission as duly organized under the Special Claims Convention.

During informal conferences the Rules of Procedure were discussed and finally adopted on August 22, 1924, and the Commission adjourned on that date, to meet in Mexico City on the first Monday in January, 1925. The American Commissioner and the officials of the United States Agency departed from Mexico City on August 23, 1924.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD MAY 16-AUGUST 15, 1924

(With reference to earlier events not previously noted.)

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *B. I. I. I.*, Bulletin de l'Institut Intermediaire International; *Bd. of trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cur. Hist.*, Current History (New York Times); *D. O.*, Diario oficial (Brazil); *E. G.*, Eidgenossische gesetzsammlung (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal Officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. Q. B.*, League of Nations, Quarterly Bulletin; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetzblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *R. R.*, American Review of Reviews; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

March, 1924

- 29 AUSTRIA-BELGIUM. Convention signed at Vienna in execution of Article 15 of convention of Oct. 4, 1920, relative to application of section III of part X (Economic clauses) of Treaty of Saint-Germain signed Sept. 10, 1919. Text: *Monit.*, May 23, 1924, p. 2692.

- 31 MEXICO-SPAIN. Copyright treaty signed at Mexico City. *P. A. U.*, July, 1924, p. 734.

April, 1924

- 4 ARGENTINA-VENEZUELA. Exchanged ratifications of arbitration treaty of July 22, 1911. *P. A. U.*, Sept., 1924, p. 947.
- 7 JAPAN-PERCU. Treaty of Amity, Commerce and Navigation of March 20, 1895, extended till Dec. 31, 1924, by exchange of notes. *Commerce Reports*, June 23, 1924, p. 800.
- 24 AUSTRIA-ITALY. Treaty of April 6, 1922, regarding the "Istituto Ipotecario" at Innsbruck, promulgated in Italy. *G. U.*, June 2, 1924, p. 2099.

May, 1924

- 3 to June 16 CHINESE EASTERN RAILWAY. On May 3, American Minister at Peking sent note to Chinese Foreign Minister referring to 13th Resolution of Washington Conference, relating to the Chinese Eastern Railway and requesting that China take note of its responsibility as trustee thereunder. Reply of June 16 addressed to American, Japanese and French Ministers, stated that since conclusion of Sino-Russian agreement, the two governments of China and Russia will deal with the question of the railway, in which only those two countries are concerned. *Press Notice*, June 18, 1924. *N. Y. Times*, June 19, 1924, p. 23.
- 4 DANZIG—POLAND. Three agreements signed in Danzig. (1) Right of Harbour board to contract loans. (2) Berne railway conference. (3) Application of Article 27 of Warsaw agreement of Oct. 24, 1921. Texts: *L. N. O. J.*, June, 1924, p. 890.
- 7 BULGARIA—CZECHOSLOVAKIA. Agreement signed whereby Bulgaria will purchase machinery and railroad equipment from Czechoslovakia and Czechoslovakia will purchase tobacco from Bulgaria. *Commerce Reports*, July 7, 1924, p. 49.
- 8 CZECHOSLOVAKIA—ICELAND. Provisional trade agreement signed at Prague. *Commerce Reports*, June 23, 1924, p. 800.
- 10-23 POLAND—SOVIET UNION. On May 10, Chicherin sent note to Poland on persecution of national minorities in Poland. Reply of Poland of May 15 rejected Soviet note as interference in internal affairs of Poland. Soviet counter-reply of May 23 dealt with action of Polish government in violating Paragraph VII of the Riga treaty. Summaries: *Russian Information*, May 31 and June 7, 1924. Polish reply of May 27 and Soviet response ending discussion made public. *Russian R.*, July 15, 1924, p. 38.
- 10 SOVIET UNION—SWEDEN. Trade agreement of March 15, 1924, became effective. *Russian R.*, July 1, 1924, p. 18.
- 12-20 LEAGUE OF NATIONS. MILITARY, NAVAL AND AIR COMMISSION. Met in Paris to examine draft convention on control of arms traffic prepared by Reduction of Armaments Commission. *L. N. M. S.*, May, 1924, p. 87.
- 13 BELGIUM—FRANCE. By exchange of notes, agreements regarding administrative regulations of convention of assistance of Nov. 30, 1921, were approved by both governments. Text of regulations: *Monit.*, June 18, 1924, p. 3104.
- 14-25 GERMAN REPARATIONS. Franco-British correspondence published. Text: *Times*, May 29, 1924, p. 10. *Adv. of Peace*, July, 1924, p. 437.

May, 1924

- 19 GERMANY—UNITED STATES. Ship-liquor treaty signed in Washington. *Wash. Post*, May 20, 1924, p. 1. *N. Y. Times*, May 20, 1924, p. 23.
- 19 to June 18 GREAT BRITAIN—ITALY. Agreement for rectification of section of Eritrea-Sudan border, signed at Kassala, Dec. 26, 1922, approved by exchange of notes. *G. B. Treaty series*, no. 29 (1924) *Cmd.* 2222.
- 20-31 PERMANENT COURT OF INTERNATIONAL JUSTICE. On May 20, Senator Pepper submitted S. Res. 234, advising adherence of the United States to the Protocol of the Court. *Cong. Rec. (daily)*, May 20, 1924, p. 9344. On May 26 and 31, majority and minority reports of the Senate Committee on Foreign Relations were presented to Congress. *68th Cong., 1st sess.* Senate Rept. 634.
- 22 FRANCE—ITALY. Exchanged ratifications of agreement relative to tariff on silk and silk manufactures, signed July 28, 1923. Text: *J. O.*, May 28, 1924, p. 4740.
- 23 HUNGARY—UNITED STATES. Act to authorize settlement of indebtedness of Hungary to the United States approved by President Coolidge. *Public* no. 128, 68th Congress.
- 24 FOREIGN SERVICE OF THE UNITED STATES. Act for reorganization and improvement of foreign service approved by President Coolidge on May 24. *Public* no. 135, 68th Congress. On June 11, President Coolidge issued Executive Order prescribing rules and regulations for administering the foreign service on an interchangeable basis. Text: *Press Notice*, June 9, 1924.
- 26 GUATEMALA. Announced that permanent delegate to League of Nations had been appointed. *N. Y. Times*, May 27, 1924, p. 20.
- 26 to June 30 IMMIGRATION RESTRICTION. Act to limit immigration of aliens into the United States approved by President Coolidge, on May 26. *Public* no. 139, 68th Congress. Statement issued to the press by President Coolidge on May 26. *Wash. Post*, May 27, 1924, p. 4. Japanese government sent note of protest to United States on May 31 to which Secretary Hughes replied on June 16. Texts: *Adv. of peace*, July, 1924, p. 430. *Cur. Hist.*, July—Aug., 1924, 20: 649 and 881. *Int. Conciliation*, Sept., 1924, no. 202. On June 30, President Coolidge proclaimed the quotas according to nationality in pursuance of the Immigration act. *Press Notice*, June 30, 1924.
- 27 to July 21 ELECTRICAL COMMUNICATIONS CONFERENCE. Inter-American Electrical Communications Commission, provided for by Fifth International Conference of American states, met at Mexico City

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on May 27 and on July 21 adopted a telegraph convention and two resolutions, signed by all delegations except that of the United States. One resolution recommended that conference be held in Rio de Janeiro in 1925 for purpose of approving and signing service regulations referred to in Article 26. The other provided that Mexican government be requested to draw up draft of regulations for use in the proposed Inter-American Conference. Text: *P.A.U.*, Sept., 1924, p. 861. *Press Notice*, Aug. 12, 1924.

- 28 BELGIUM—FRANCE. Exchanged ratifications of convention of July 26, 1921, relative to application to Belgians established in France of the war profits law of July 1, 1916. Text: *Monit.*, June 28, 1924, p. 3283.

- 28 CZECHOSLOVAKIA—ITALY. Treaty of alliance signed. Text in French: *Ga. de Prague*, May 31 and July 12, 1924.

- 28 to July 8 MILITARY CONTROL COMMISSION. Conference of Ambassadors replied to German note of March 31 rejecting German contentions. Text: *Times*, May 31, 1924, p. 13-14. Herriot-MacDonald declaration of June 24 contained warning and advice. Text: *Times*, June 25, 1924, p. 14. German reply of June 30 to Ambassadors' note of May 28 and Franco-British declaration of June 24, accepted resumption of military control with three reservations. Text: *Times*, July 1, 1924, p. 15. *Europe*, July 5, 1924, p. 869. On July 8, Conference of Ambassadors sent reply to German note of June 30. *Times*, July 10, 1924, p. 13.

- 28 PANAMA—UNITED STATES. In accordance with Joint Resolution of Congress approved Feb. 12, 1923, President Coolidge issued proclamation abrogating as of June 1, the Taft agreement—a series of Executive orders issued between 1904 and 1911, providing a temporary modus vivendi to cover the period of construction of the Panama Canal. *Cur. Hist.*, July, 1924, p. 664. *Press Notice*, May 28, 1924.

- 30 CZECHOSLOVAKIA—LITHUANIA. Commercial treaty signed at Prague, April 27, 1923, ratified by Lithuania on Oct. 26, 1923, and by Czechoslovakia on May 30, 1924. *Commerce Reports*, Sept. 15, 1924, p. 683.

- 30 GREECE—SERBIA. Exchanged ratifications of convention of May 10, 1923, providing for free zone for Serbia at Saloniki. *Commerce Reports*, Aug. 25, 1924, p. 506.

- 30 NETHERLANDS—POLAND. Commercial treaty providing most-favored-nation treatment signed at Warsaw. *Commerce Reports*, July 7, 1924, p. 49.

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- 31 CHINA—SOVIET UNION. Agreement on general principles for settlement of questions between the two countries and agreement for provisional management of Chinese Eastern Railway signed at Peking. Text: *Cur. Hist.*, Sept., 1924, 20: 960. *Nation* (N. Y.) Oct. 8, 1924, p. 368. *Europe*, July 26, 1924, p. 960.
- 31 DOMINICAN REPUBLIC. President of Republic signed a thirty-year concession to the All-America Cable Company to land cables and to furnish international service with that country. *Press Notice*, June 2, 1924.

June, 1924

- 3 FRANCE—UNITED STATES. Exchanged ratifications of two conventions, signed at Paris, Feb. 13, 1923, relating to Togoland and the Cameroons (B mandate treaties). Text of treaties: *J. O.*, July 4, 1924, pp. 5946 and 5948. *U. S. Treaty series*, no. 690; supplement to this JOURNAL, pp. 189, 193.
- 3 ITALY—UNITED STATES. Ship-liquor treaty signed in Washington. Text: *Cong. Record (daily)*, June 4, 1924, p. 10750.
- 6 CANADA—UNITED STATES. New liquor smuggling treaty signed at Washington. *N. Y. Times*, June 7, 1924, p. 15. Text: *Press Notice*, June 6, 1924.
- 6 CHINA—GERMANY. Economic agreement reached by exchange of notes. Text: *Nation* (N. Y.) Oct. 15, 1924, p. 426.
- 6 CZECHOSLOVAKIA—SERBIA. Exchanged ratifications of juridical convention. *Ga. de Prague*, June 12, 1924, p. 1.
- 6 PANAMA—UNITED STATES. Liquor-smuggling treaty signed at Washington. *Press Notice*, June 6, 1924. *P. A. U.*, Sept., 1924, p. 947.
- 7 FINLAND—JAPAN. Commercial treaty based on most-favored-nation principle signed at Helsingfors. *Commerce Reports*, Aug. 25, 1924, p. 505.
- 10 LITHUANIA—NETHERLANDS. Provisional commercial treaty signed at Kovno based on most-favored-nation principle. *Commerce Reports*, July 21, 1924, p. 186.
- 11 NICARAGUA—UNITED STATES. Agreement effected by exchange of notes according mutual most-favored-nation treatment in customs matters. *U. S. Treaty series*, no. 697.
- 11-17 LEAGUE OF NATIONS COUNCIL. Held 29th session at Geneva for discussion of reduction of armaments, the Serbo-Albanian frontier, question of Iraq etc. *L. N. O. J.*, July, 1924. *Cmd.* 2187.

June, 1924

- 13-26 SOUTH AFRICA—UNITED STATES. Reciprocal copyright agreement, effective July 1, 1924, concluded by proclamation of President Coolidge on June 26 and by Governor General of South Africa on June 13. *Press Notice*, June 28, 1924.
14. CHINESE INDEMNITY. Secretary Hughes and the Chinese Minister at Washington exchanged notes relating to Public Resolution 21 of the 68th Congress, for remission of Chinese indemnity, approved by President Coolidge, on May 21. *Press Notice*, June 27, 1924.
- 16 GREAT BRITAIN—POLAND. Exchanged ratifications of treaty of commerce and navigation signed at Warsaw on Nov. 26, 1923. *G. B. Treaty series*, no. 26 (1924) *Cmd.* 2219.
- 16 to July 5 INTERNATIONAL LABOR CONFERENCE. Held sixth session at Geneva and adopted recommendation concerning development of facilities for utilization of workers' spare time. Text: *I. L. O. B.*, July 15, 1924, supplement.
- 17 to July 12 CHINA—SOVIET UNION. Exchanged notes relating to Russian Legation buildings in Peking. *Russian Information*, July 26, 1924, p. 62.
- 17 INTERNATIONAL COMMUNIST CONGRESS. Fifth conference opened at Moscow, with 500 delegates from all parts of world. *N. Y. Times*, June 18, 1924, p. 12.
- 18 DENMARK—SOVIET UNION. *De jure* recognition accorded Soviet Government by Denmark. *Press Notice*, June 19, 1924. *Russian Information*, June 21, 1924, p. 386.
- 18 FINLAND—SOVIET UNION. Five conventions signed at Helsingfors, covering railways, telephone, telegraph, posts, and exchange of archives. *Russian R.*, Aug. 1, 1924, p. 56.
- 18 GREAT BRITAIN—MEXICO. Diplomatic relations suspended, following note in reply to MacDonald's warning concerning persecution of British agent, H. C. Cummins. *Wash. Post.*, June 19, 1924, p. 1.
- 19 MONGOLIA. Minister of Foreign Affairs of Mongolia notified Soviet Union that a republic had been proclaimed. *Russian R.*, Aug. 1, 1924, p. 56.
- 21 ECUADOR—PERU. Protocol submitting boundary dispute to the United States for arbitration was signed at Quito, providing for meeting of delegates in Washington, after decision in Tacna-Arica question has been rendered. *P. A. U.*, Sept., 1924, p. 947.
- 21 FINLAND—GREAT BRITAIN. Agreement in regard to reciprocal recognition of tonnage measurement certificates of British and Finnish ships signed at Helsingfors. Text: *G. B. Treaty series*, no. 30 (1924) *Cmd.* 2231.

June, 1924

- 24 BULGARIA—UNITED STATES. Exchanged ratifications of extradition treaty of March 19, 1924. *U. S. Treaty series*, no. 687.
- 24 COSTA RICA—UNITED STATES. Exchanged ratifications of commercial traveler's convention. Text: *U. S. Treaty series*, no. 688.
- 24 SWEDEN—UNITED STATES. Treaty of arbitration signed in Washington to replace that which expired on Aug. 18, 1918. *Press Notice*, June 24, 1924.
- 27 GREAT BRITAIN—SPAIN. Agreement regulating the treatment of companies signed at Madrid. Text: *G. B. Treaty series*, no. 25 (1924) *Cmd.* 2212. *Ga. de Madrid*, July 3, 1924.
- 30 FRANCE—UNITED STATES. Ship-liquor treaty signed in Washington. *N. Y. Times*, July 1, p. 25. *Press Notice*, June 30, 1924.

July, 1924

- 1 UNIVERSAL POSTAL CONGRESS. Opened in Stockholm. *Union postale*, Sept. 1, 1924, p. 129.
- 2 LATVIA—NETHERLANDS. Commercial treaty signed at Riga providing reciprocal most-favored-nation treatment. *Commerce Reports*, Sept. 8, 1924, p. 627.
- 2 MEXICO—UNITED STATES. Department of State announced appointments to General Claims Commission under Convention of Sept. 8, 1923, and Special Claims Commission under Convention of Sept. 10, 1923. *Press Notice*, July 2, 1924. See note in this JOURNAL, *supra*, p. 795.
- 2 NORWAY—UNITED STATES. Exchanged ratifications of ship-liquor treaty, signed May 24, 1924. Text: *U. S. Treaty series*, no. 689; supplement to this JOURNAL, p. 197.
- 3 PERSIA—SOVIET UNION. Commercial treaty signed at Teheran granting reciprocal most-favored-nation treatment. *Commerce Reports*, Sept. 8, 1924, p. 627. *Russian R.*, Aug. 15, 1924, p. 76.
- 4 BELGIUM—CANADA. Commercial treaty, with most-favored-nation clause, signed in Ottawa. *Times*, July 5, 1924, p. 13. *Commerce Reports*, Aug. 4, 1924, p. 314.
- 7-12 LEAGUE OF NATIONS. REDUCTION OF ARMAMENTS COMMISSION. Held 10th session at Geneva to prepare draft convention on international control of the traffic in arms and munitions. *L. N. M. S.*, July, 1924, p. 127. *Times*, July 13, 1924, p. 3.
- 8 PERU—UNITED STATES. Exchanged ratifications of commercial traveler's convention signed Jan. 19, 1923. Text: *U. S. Treaty series*, no. 692.

July, 1924

- 10 DENMARK—NORWAY. Treaty regarding East Greenland came into force. *Cur. Hist.*, Sept., 1924, 20: 1045.
- 10 MUTUAL GUARANTEE TREATY. Secretary Hughes' reply to request from League of Nations for views as to draft treaty made public. Text: *N. Y. Times*, July 11, 1924, p. 1.
- 11-12 LITTLE ENTENTE CONFERENCE. Czechoslovakia, Serbia and Rumania met in conference at Prague. *Cur. Hist.*, Aug., 1924, 20: 880. *Contemp. R.*, Aug., 1924, p. 248.
- 12 DOMINICAN REPUBLIC—UNITED STATES. American occupation ended, with evacuation of United States marines, in accordance with agreement of evacuation entered into on June 30, 1922. *Wash. Post.*, July 13, 1924, p. 1. New constitution of Dominican Republic promulgated as of July 13. *Press Notice*, July 8, 1924.
- 12 NICARAGUA—UNITED STATES. Agreement effected by exchange of notes for mutual most-favored-nation treatment with respect to customs duties and other commercial charges. Text: *Press Notice*, July 12, 1924.
- 12 RUSSIAN PROPERTY. Note presented by Powers to China warning her that Russian property must not be returned except to trusted agency. *Press Notice*, July 14, 1924. *Wash. Post.*, July 15, 1924, p. 10.
- 12 TANGIER CONVENTION, PARIS, DEC. 18, 1923. Secretary Hughes replied to identic note transmitted by British, French and Spanish governments, asking approval of Tangier convention. He pointed out objectionable features of the plan for internationalizing the Tangiers Zone, requested that rights of American citizens be respected, and rejected proposal that United States have a representative in the legislative assembly set up under the convention. *N. Y. Times*, July 13, 1924, p. 4.
- 14 GREAT BRITAIN—JAPAN. Exchanged notes respecting abrogation of Article 8 of the Treaty of Commerce and Navigation of April 3, 1911. *G. B. Treaty series*, no. 31 (1924) *Cmd.* 2230.
- 14 ITALY—SERBIA. Commercial treaty signed based on reciprocal most-favored-nation treatment. *Commerce Reports*, July 28, 1924, p. 249.
- 15 JAPAN. Government bill revising nationality law and abolishing "dual nationality" passed by both houses of the Diet. *Wash. Post.*, July 16, 1924, p. 1.
- 16 PERMANENT COURT OF INTERNATIONAL JUSTICE. Met in ordinary session at The Hague with three questions on the case list: the Mavromatis Palestine concessions, a legal point in connection with

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- question of Serbo-Albanian frontier in the district of St. Naoum, which has been referred to the Court by the Council, and a Greco-Bulgarian dispute submitted to the Court in accordance with an arbitration agreement. *L. N. M. S.*, June and July, 1924.
- 16 to Aug. 16 GERMAN REPARATIONS. Conference of Allied governments, and United States, opened at London July 16 to consider application of Dawes plan. German delegates arrived Aug. 5. Final protocol and four agreements initialled Aug. 16, subject to formal signature by Aug. 30, containing undertakings by all interested parties to put Dawes plan into execution. *N. Y. Times*, Aug. 17, 1924, p. 1. Text of communiqué concerning call of conference: *Wash. Post.*, June 23, 1924, p. 1. Correspondence concerning Allied conference published. *Cmd.* 2184. *N. Y. Times*, July 9, 1924, p. 6. Text of protocol and agreements: *Europe*, Aug. 23, 1924, p. 1089. *Times*, Aug. 18, 1924, p. 10. *Cur. Hist.*, Oct. 1924, 21: 155.
- 18 HONDURAS—UNITED STATES. United States notified General Tosta, temporary president of Honduras after recent revolution, that this government will not recognize any Honduran government headed by revolutionary leader. *Wash. Post.*, July 19, 1924, p. 1.
- 18 POLAND—SOVIET UNION. Consular convention signed at Moscow. *Russian R.*, Sept. 1, 1924, p. 93.
- 23 IRISH FREE STATE—UNITED STATES. Correspondence exchanged in June between Secretary Hughes and Ambassador Howard concerning appointment of Minister from Ireland made public. *N. Y. Times*, July 24, 1924, p. 14. *Press Notice*, July 23, 1924.
- 25 DENMARK—UNITED STATES. Exchanged ratifications of ship-liquor treaty signed May 29, 1924. *U. S. Treaty series*, no. 693; supplement to this JOURNAL, p. 186.
- 25 GERMANY—SPAIN. Commercial "modus vivendi" arranged by exchange of notes. *Ga. de Madrid*, July 31, 1924, p. 585.
- 29 BELGIUM—FRANCE. Conditions of agreement providing for direct telegraphic communication between Belgian Congo and Uganda accepted by both countries in exchange of notes. Text: *G. B. Treaty series* no. 33 (1924) *Cmd.* 2242.
- 29 GERMANY—SOVIET UNION. Protocol covering adjustment of controversies signed at Berlin. Text: *Russian R.*, Sept. 1, 1924. *Russian Information*, Aug. 9, 1924, p. 94.
- 31 REPARATION PAYMENTS. Reparation Commission reports on what Germany had paid up to July 1, 1924. *Cmd.* 2242. *Times*, Aug. 1, 1924, p. 1.

August, 1924

- 6 FRANCE—LUXEMBOURG. Exchanged ratifications of treaty of assistance signed at Luxembourg, Jan. 4, 1923. *J. O.*, Aug. 31, 1924, p. 8065.
- 7 CZECHOSLOVAKIA—GERMANY. Trade agreement, recently concluded, came into force. *Times*, Aug. 2, 1924, p. 9.
- 7 FRANCE—NORWAY. Protocol interpretative of the convention of April 23, 1921, relative to wines and intoxicating liquors, signed at Paris: Text: *J. O.*, Sept. 11, 1924, p. 8358.
- 8 GREAT BRITAIN—SOVIET UNION. General Treaty and Treaty of Commerce and Navigation signed in London. Text: *Europe*, Aug. 30, 1924, p. 1146. *Russian Information*, Aug. 16, 1924, p. 101. *Russian R.*, Sept. 15, 1924, p. 114. *Times*, Aug. 9, 1924, p. 10.
- 11 CHINA. The Ministers of the United States, France, Great Britain and Japan at Peking sent joint note to Chinese Minister for Foreign Affairs regarding obligations of Chinese government to protect loss of life and property to members of the foreign community at Shanghai in event of an outbreak of hostilities. Text: *Press Notice*, Aug. 30, 1924.
- 11 GERMANY—UNITED STATES. Exchanged ratifications of ship-liquor treaty, signed May 19, 1924. *U. S. Treaty series*, no. 694.
- 14 GUATEMALA—UNITED STATES. Agreement effected by exchange of notes, according mutual most-favored-nation treatment in customs matters. *U. S. Treaty series*, no. 696.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Paris, Oct. 13, 1919. Protocol, Paris, May 1, 1920.

Ratification:

Rumania. May 31, 1924. *Monit.*, July 19, 1924, p. 3646.

AGRICULTURAL WORKERS' ASSOCIATIONS. Geneva, Nov. 12, 1921.

Ratification:

Austria. June 6, 1924.

Irish Free State. June 18, 1924.

Poland. June 23, 1924. *I. L. O. B.*, July 15, 1924.

AGRICULTURE, INTERNATIONAL INSTITUTE OF. Rome, June 7, 1905.

Adhesion:

Philippine Islands, Hawaii, Porto Rico, Virgin Islands. *Monit.*, June 24, 1924, p. 2888. *E. G.*, June 4, 1924, p. 275.

SALES PROTOCOL. Geneva, Sept. 24, 1923.

1924. *L. N. O. J.*, June, 1924, p. 827.

Japan. Mar. 15, 1924.

Monaco. Mar. 29, 1924.

Netherlands. Mar. 31, 1924.

Rumania. Mar. 6, 1924. *L. N. O. J.*, May, 1924, p. 750.

CENTRAL AMERICAN TREATY FOR AGRICULTURAL EXPERIMENT STATIONS.
Washington, Feb. 7, 1923.

Ratification:

Salvador. April 30, 1924. *P. A. U.*, Aug., 1924, p. 837.

CENTRAL AMERICAN TREATY FOR COMMISSIONS OF INQUIRY. Washington,
Feb. 7, 1923.

Ratification:

Guatemala. May 24, 1924. *P. A. U.*, Aug., 1924, p. 837. *N. Y. Times*, May 27, 1924, p. 8.

CENTRAL AMERICAN TREATY FOR ESTABLISHMENT OF PERMANENT COMMISSIONS. Washington, Feb. 7, 1923.

Ratification:

Salvador. April 30, 1924. *P. A. U.*, Aug., 1924, p. 837.

CENTRAL AMERICAN TREATY OF PEACE AND AMITY. Washington, Feb. 7, 1923.

Ratification:

Guatemala. May 24, 1924. *P. A. U.*, Aug., 1924, p. 837.

Nicaragua. June 21, 1924. *Cur. Hist.*, Aug., 1924, 20: 844.

CENTRAL AMERICAN TREATY ON LIMITATION OF ARMAMENTS. Washington,
Feb. 7, 1923.

Ratification:

Guatemala. May 24, 1924. *P. A. U.*, Aug., 1924, p. 837. *N. Y. Times*, May 27, 1924, p. 8.

CENTRAL AMERICAN TREATY ON PRACTICE OF LIBERAL PROFESSIONS. Washington, Feb. 7, 1923.

Ratification:

Salvador. April 30, 1924. *P. A. U.*, Aug., 1924, p. 837.

COPYRIGHT UNION. Revision. Berlin, Nov. 13, 1908.

Adhesion:

Syria and Lebanon. *E. G.*, Aug. 27, 1924, p. 388.

CUSTOMS DOCUMENTS. Santiago, May 3, 1923.

Ratification:

Costa Rica. June 25, 1924.

Paraguay. June 5, 1924. *Commerce Reports*, Aug. 18, 1924, 1

CUSTOMS FORMALITIES. Geneva, Nov. 3, 1923.

Ratification:

Denmark. May 17, 1924. *L. N. O. J.*, June, 1924, 1

Italy. May 4, 1924. *G. U.*, July 18, 1924, p. 2611. *L. N. O. J.*, Aug. 1924, p. 1034.

Signatures:

Japan. March 17, 1924.

Netherlands. Feb. 14, 1924.

Poland. March 31, 1924. *L. N. O. J.*, May, 1924, p. 749.

Czechoslovakia. May 8, 1924.

Denmark. April 23, 1924.

Hungary. April 29, 1924.

New Zealand. May 12, 1924. *L. N. O. J.*, June, 1924, p. 827.

CUSTOMS TARIFFS. Publication. Brussels, July 5, 1890.

Adhesion:

Luxemburg. *Monit.*, Aug. 22, 1924, p. 4245. *E. G.*, Aug. 27, 1924, p. 390.

EIGHT-HOUR DAY. Washington, Nov. 28, 1919.

Ratification:

Austria. June 6, 1924, *I. L. O. B.*, July 15, 1924.

ELBE NAVIGATION. Dresden, Feb. 22, 1922. Additional Protocol.

Prague, Jan. 27, 1923.

Text: *G. B. Treaty series*, no. 17 (1924) *Cmd.* 2091.

Ratifications deposited:

Italy. March 31, 1923.

Belgium, France, Great Britain. Dec. 29, 1923.

Czechoslovakia. Dec. 30, 1923.

Germany. Dec. 31, 1923. *Monit.*, Mar. 6, 1924, p. 1102.

EMPLOYMENT OF CHILDREN AT SEA. Genoa July, 9, 1920.

Ratification:

Italy. March 20, 1924. *G. U.*, May 6, 1924, p. 1694.

Denmark. May 10, 1924.

Japan. April 23, 1924.

Poland. June 11, 1924.

Spain. June 7, 1924. *I. L. O. B.*, July 15, 1924.

EMPLOYMENT OF CHILDREN IN AGRICULTURE. Geneva, Nov. 16, 1921.

Ratification:

Austria. June 6, 1924. *I. L. O. B.*, July 15, 1924, p. 144.

Italy. Mar. 20, 1924. *G. U.*, May 5, 1924, p. 1674.

Japan. Dec. 19, 1923. *I. L. O. B.*, Mar. 31, 1924.

Poland. *I. L. O. B.*, July 15, 1924.

EMPLOYMENT OF CHILDREN IN INDUSTRY. Washington, Nov. 28, 1919.

Ratification:

Austria. April 11, 1924. *Monit.*, Sept. 3, 1924, p. 4437.

Italy. May 6, 1924. *G. U.*, May 6, 1924, p. 1693.

Japan. July 15, 1924. *I. L. O. B.*, July 15, 1924.

EMPLOYMENT OF YOUNG PERSONS AS TRIMMERS AND STOKERS. Geneva, Nov. 11, 1921.

Ratification:

Italy. Mar. 20, 1924. *G. U.*, May 5, 1924, p. 1674.

Denmark. May 10, 1924.

Poland. June 11, 1924.

Spain. June 7, 1924. *I. L. O. B.*, July 15, 1924.

EMPLOYMENT (FINDING) FOR SEAMEN. Geneva, July 10, 1920.

Ratification:

Poland. *I. L. O. B.*, July 15, 1924.

FALSE INDICATION OF ORIGIN OF GOODS. Madrid, Aug. 14, 1891. Revision. Washington, June 2, 1911.

Adhesion:

Syria.

Lebanon. *E. G.*, Aug. 27, 1924, p. 388.

FOOD ANALYSIS STATISTICS. Paris, Oct. 16, 1912.

Ratification deposited:

Norway. Sept. 1, 1924. *J. O.*, Sept. 3, 1924, p. 8138.

FREEDOM OF TRANSIT. Barcelona, April 20, 1921.

Adhesion:

Germany. April 9, 1924. *L. N. O. J.*, June, 1924, p. 827.

Ratification:

France. May 31, 1924. *J. O.*, June 1, 1924, p. 4906.

Greece. Feb. 18, 1924.

Japan. Feb. 20, 1924. *L. N. O. J.*, May, 1924, p. 749.

Netherlands. April 17, 1924. *L. N. O. J.*, June, 1924, p. 827.

GERMAN PEACE TREATY. Versailles, June 28, 1919. Amendment to Article 393, Oct. 18–Nov. 3, 1922.

Ratification:

Finland. Mar. 25, 1924.

Norway. April 8, 1924.

Siam. Mar. 13, 1924. *L. N. O. J.*, May, 1924, p. 821.

Denmark. June 8, 1924.

Sweden. April 25, 1924. *L. N. O. J.*, June, 1924, p. 892.

Spain. July 5, 1924. *Ga. de Madrid*, Aug. 7, 1924, p. 747.

GREEK REPARATIONS. Lausanne, July 24, 1923.

Promulgation:

Italy. Jan. 31, 1924. *G. U.*, May 28, 1924, p. 2044.

Signatures: Greece, France, Great Britain, Italy. *G. U.*, May 28, 1924, p. 2044.

LEAGUE OF NATIONS. Covenant. Protocol of Amendments. Geneva, Oct. 3-5, 1921.

Ratification deposited:

Great Britain (including Canada, Australia, Union of South Africa, New Zealand and India) (Art. 6) Aug. 12, 1924. *G. B. Treaty series*, no. 32 (1924) *Cmd.* 2241.

Italy (Art. 6) June 13, 1924. *Monit.*, Aug. 8, 1924, p. 4011.

Liberia (Art. 4 and 6) May 1, 1924. *Monit.*, June 4, 1924, p. 2888.

L. N. O. J., June, 1924, p. 827.

Spain (Art. 6) Jan. 31, 1924. *Ga. de Madrid*, June 5, 1924, p. 1182.

LETTERS, ETC., OF DECLARED VALUE. Madrid, Nov. 30, 1920.

Ratification:

Serbia. June 28, 1924. *Ga. de Madrid*, July 3, 1924, p. 110.

MEDICAL EXAMINATION OF YOUNG PERSONS EMPLOYED AT SEA. Geneva, Nov. 10, 1921.

Ratification:

Japan. April 23, 1924.

Poland. June 11, 1924.

Spain. June 7, 1924. *I. L. O. B.*, July 15, 1924.

MERCHANDISE CLASSIFICATION. Santiago, May 3, 1923.

Ratification:

Costa Rica. June 25, 1924.

Paraguay. June 5, 1924. *Commerce Reports*, Aug. 18, 1924, p. 447.

MONEY ORDERS. Madrid, Nov. 30, 1920.

Ratification:

Serbia. June 28, 1924. *Ga. de Madrid*, July 3, 1924, p. 110.

MOTOR VEHICLES, International Circulation of. Paris, Oct. 11, 1909.

Notification that convention is binding:

Irish Free State. *Monit.*, Aug. 3, 1924, p. 3965. *E. G.*, Aug. 6, 1924.

NAVIGABLE WATERWAYS CONVENTION AND PROTOCOL. Barcelona, April 20, 1921.

Ratification:

Rumania. May 9, 1924. *L. N. O. J.*, June, 1924, p. 827.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919.

Ratification:

Austria. June 6, 1924. *I. L. O. B.*, July 15, 1924.

Belgium. April 11, 1924. *Monit.*, Sept. 3, 1924, p. 4437.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.

Ratification:

Belgium. April 11, 1924. *Monit.*, Sept. 3, 1924, p. 4437.

Austria. June 6, 1924.

Poland. June 23, 1924. *I. L. O. B.*, July 15, 1924.

OBSCENE PUBLICATIONS. Paris, May 4, 1910.

Adhesion:

Estonia. *E. G.* Aug. 27, 1924, p. 390. *Ga. de Madrid*, Aug. 22, 1924, p. 965.

Ratification:

Bulgaria. July 6, 1924.

Italy. July 8, 1924. *N. O. J.*, Aug. 1924, p. 1034.

Ratification deposited:

Brazil. June 3, 1924. *Monit.*, Aug. 24, 1924, p. 4270. *E. G.*, Aug. 27, 1924, p. 389.

OBSCENE PUBLICATIONS. Geneva, Sept. 12, 1923.

Signatures:

Danzig. Mar. 31, 1924.

Finland. Mar. 14, 1924.

Germany. Mar. 27, 1924.

Irish Free State. Mar. 31, 1924.

Japan. Mar. 31, 1924.

Monaco. Mar. 28, 1924.

South Africa. Mar. 15, 1924.

Turkey. Mar. 31, 1924. *L. N. O. J.*, May, 1924, p. 750.

OPIUM CONVENTION, 2d The Hague, Jan. 23, 1912.

Ratification:

Switzerland. Jan. 5, 1924. *For. Pol. Assoc. News bulletin*, July 18, 1924.

PARCEL POST CONVENTION. Madrid, Nov. 30, 1920.

Ratification:

Serbia. June 23, 1924. *Ga. de Madrid*, July 3, 1924, p. 110.

POLISH TREATY. Versailles, June 28, 1919.

Ratification deposited:

Poland. Aug. 22, 1924. *J. O.*, Aug. 31, 1924, p. 8034.

POSTAL CONVENTION. Buenos Aires, Sept. 15, 1921.

Adhesion:

Spain. Aug. 5, 1924. *Ga. de Madrid*, Aug. 13, 1924, p. 855.

POSTAL CONVENTION. Madrid, Nov. 13, 1920.

Promulgation:

Brazil. Feb. 23, 1924. *P. A. U.*, July, 1924, p. 732.

POSTAL SUBSCRIPTION TO NEWSPAPERS. Madrid, Nov. 30, 1920.

Ratification:

Serbia. June 28, 1924. *Ga. de Madrid*, July 3, 1924, p. 110.

POSTAL TRANSFERS. Madrid, Nov. 30, 1920.

Ratification:

Serbia. June 28, 1924. *Ga. de Madrid*, July 3, 1924, p. 110.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, March 20, 1883. Revision. Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Syria.

Lebanon. *E. G.*, Aug. 27, 1924, p. 388.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912.

Adhesion:

Irish Free State. April 22, 1924.

Tanganyika Territory. March 5, 1924. *E. G.*, May 28, 1924, p. 274.

Monit., June 4, 1924, p. 2888.

RAILWAYS REGIME. Convention and statute. Geneva, Dec. 9, 1923.

Signature:

Czechoslovakia. June 3, 1924. *L. N. O. J.*, Aug. 1924, p. 1033.

REFRIGERATION, INTERNATIONAL INSTITUTE OF. Paris, June 21, 1920.

Ratification deposited:

Japan. March 4, 1924. *Monit.*, May 23, 1924, p. 2691.

RIGHT TO A FLAG OF STATES HAVING NO SEACOAST. Barcelona, April 20, 1921.

Ratification:

Austria. July 10, 1924. *L. N. O. J.*, Aug. 1924, p. 1033.

Japan. Feb. 20, 1924. *L. N. O. J.*, May, 1924, p. 749.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Ratification deposited:

Hungary. Aug. 1, 1924. *J. O.*, Aug. 20, 1924, p. 7754.

SERVICE DES RECouvreMENTS. Madrid, Nov. 30, 1920.

Ratification:

Serbia. June 28, 1924. *Ga. de Madrid*, July 3, 1924, p. 110.

SPITZBERGEN. Paris, Feb. 9, 1920.

Ratification:

Italy. July 19, 1924. *G. U.*, Aug. 19, 1924, p. 2879.

TANGIER CONVENTION. Paris, Dec. 18, 1923.

Ratifications deposited:

Great Britain, France, Spain. May 14, 1924. *G. B. Treaty series*, no. 23 (1924) *Cmd.* 2203.

TRADE-MARKS REGISTRATION. Madrid, April 14, 1891. Revision. Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Luxemburg. *E. G.*, Aug. 27, 1924, p. 389.

UNEMPLOYMENT CONVENTION. Washington, Nov. 28, 1919.

Ratification:

Austria. June 6, 1924.

Poland. June 11, 1924. *I. L. O. B.*, July 15, 1924.

UNEMPLOYMENT INDEMNITY IN CASE OF LOSS OF SHIP. Geneva, July 9, 1920.

Ratification:

Poland and Spain. *I. L. O. B.*, July 15, 1924.

UNIVERSAL POSTAL UNION. Revision. Madrid, Nov. 30, 1920.

Adhesion:

Soviet Union. June 24, 1924. *E. G.*, July 2, 1924.

Ratification:

Serbia. June 28, 1924. *Ga. de Madrid*, July 3, 1924, p. 110. *E. G.*, Aug. 27, 1924, p. 383.

WEEKLY REST IN INDUSTRY. Geneva, Nov. 17, 1921.

Ratification:

Poland and Spain. *I. L. O. B.*, July 15, 1924.

WEIGHTS AND MEASURES BUREAU. Paris, May 20, 1875. Revision. Oct. 6, 1921.

Ratification deposited:

Italy. Aug. 6, 1924. *J. O.*, Aug. 21, 1924, p. 7802.

WHITE LEAD IN PAINT. Geneva, Nov. 19, 1921.

Ratification:

Austria. June 6, 1924.

Poland. June 23, 1924.

Spain. June 7, 1924. *I. L. O. B.*, July 15, 1924.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Gold Coast. June 21, 1924. *Monit.*, Aug. 22, 1924, p. 4246.

Falkland Islands. *Monit.*, July 31, 1924, p. 3884.

Leeward Islands and Mauritius. *Monit.*, June 4, 1924, p. 2888.

Ratifications deposited:

Brazil. June 3, 1924. *Monit.*, Aug. 27, 1924, p. 4314.

Italy. May 28, 1924. *Monit.*, July 31, 1924, p. 3884.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921.

Adhesion:

Falkland Islands. May 8, 1924. *L. N. O. J.*, June, 1924, p. 827. *Monit.*, June 7, 1924, p. 2034.

Gold Coast. *Monit.*, Aug. 29, 1924, p. 4359. *L. N. O. J.*, Aug. 1924, p. 1033.

Spain. May 25, 1924. *Ga. de Madrid*, June 5, 1924, p. 1182. *Monit.*, Aug. 6, 1924, p. 3994. *L. N. O. J.*, Aug. 1924, p. 1033.

Ratification deposited:

Germany. July 8, 1924. *L. N. O. J.*, Aug., 1924, p. 1033.

Italy. June 30, 1924. *Monit.*, July 31, 1924, p. 3885.

WORKMEN'S COMPENSATION IN AGRICULTURE. Geneva, Nov. 12, 1921.

Ratification:

Poland and Irish Free State. *I. L. O. B.* July 15, 1924.

M. ALICE MATTHEWS

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL¹

FII LAND CLAIMS

American traders acquired certain lands in the Fiji Islands by purchase from native chiefs years before the cession of the islands to Great Britain in 1874. After the cession, Great Britain established a board of land commissioners to pass upon the validity of titles to land in the islands, and by 1882 more than 1,300 claims were passed upon.

The titles of these American claimants were denied by the land commissioners, and Great Britain contended that the chiefs who sold the lands could not acting alone convey the equivalent of a fee simple title; that under native custom certain occupiers of the soil had specific rights which could not be alienated without their express consent, and that as the latter were not parties to the deeds, no valid titles had been conveyed.

The Tribunal held that the chiefs had the power to convey, and drew a distinction between the want of power and the possible abuse of the power. Each case was thereupon considered upon its merits and awards rendered accordingly.

CASE OF GEORGE RODNEY BURT (CLAIM NO. 44)

Award rendered at London, October 26, 1923

Held, that the claimant had valid conveyances from the chiefs, and that the British authorities, by refusing to recognize his title, failed to carry out the obligation which Great Britain, as the succeeding power in the islands, must be held to have assumed from the point of view of international law.

Speculative valuation and prospective profits not included in the award.

On the tenth day of October, 1874, Great Britain acquired by peaceful cession "the possession of and full sovereignty and dominion over" the Fiji Islands. The deed of cession executed by Thakombau (or Cakobau), the then reputed overlord chief or King in Fiji, and by twelve other natives styled the "high chiefs" of the islands, reads as follows:

WHEREAS, divers subjects of Her Majesty the Queen of Great Britain and Ireland have from time to time settled in the Fijian group of Islands, and have acquired property or certain pecuniary interests therein; And whereas the Fijian Chief Thakombau, styled Tui Viti and Vuniyalu, and other high Chiefs of the said Islands, are desirous of securing the promotion of civilisation and Christianity, and of increasing trade and industry within the said Islands; And whereas it is obviously desirable in the interests as well of the natives as of the white population that order and good government should be established therein; And whereas the said Tui Viti and other high Chiefs have conjointly and severally requested Her Majesty

¹ Established in pursuance of the special agreement between Great Britain and the United States, signed at Washington, Aug. 18, 1910. (Supplement to this JOURNAL, Vol. 5, pp. 257-267.)

Arbitrators: Henri Fromageot, Edward A. Mitchell Innes, Robert E. Olds.

Agents and Senior Counsel: United States—Mr. Fred K. Nielsen; Great Britain—Sir Cecil J. B. Hurst.

Previous decisions of the tribunal will be found printed in this JOURNAL, Vol. 7, pp. 875-890; Vol. 8, pp. 650-665; Vol. 15, pp. 292-304; Vol. 16, pp. 106-116, 301-333.

Headnotes supplied by the Managing Editor.

the Queen of Great Britain and Ireland aforesaid to undertake the government of the said Islands henceforth; And whereas, in order to the establishment of British government within the said Islands, the said Tui Viti and other the several high Chiefs thereof, for themselves and their respective tribes, have agreed to cede the possession of and the dominion and sovereignty over the whole of the said Islands, and over the inhabitants thereof, and have requested Her said Majesty to accept such cession; which cession the said Tui Viti and other high Chiefs, relying upon the justice and generosity of Her said Majesty, have determined to tender unconditionally, and which cession, on the part of the said Tui Viti and other high Chiefs is witnessed by the execution of these presents, and by the formal surrender of the said territory to Her said Majesty; And whereas his Excellency Sir Hercules George Robert Robinson, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor, Commander-in-Chief, and Vice-Admiral of the British Colony of New South Wales and its Dependencies, and Governor of Norfolk Island, hath been authorized and deputed by Her said Majesty to accept on her behalf the said cession:

Now these presents witness,

1. That the possession of and full sovereignty and dominion over the whole of the group of Islands in the South Pacific Ocean known as the Fijis (and lying between the parallels of latitude of fifteen degrees south, and twenty-two degrees south of the Equator, and between the meridian of longitude of one hundred and seventy-seven degrees west, and one hundred and seventy-five degrees east of the meridian of Greenwich), and over the inhabitants thereof, and of and over all ports, harbours, havens, roadsteads, rivers, estuaries, and other waters, and all reefs and foreshores within or adjacent thereto, are hereby ceded to and accepted on behalf of Her said Majesty the Queen of Great Britain and Ireland, her heirs and successors, to the intent that from this time forth the said Islands, and the waters, reefs, and other places as aforesaid, lying within or adjacent thereto, may be annexed to and be a possession and dependency of the British Crown.

2. That the form or constitution of Government, the means of the maintenance thereof, and the laws and regulations to be administered within the said islands, shall be such as Her Majesty shall prescribe and determine.

3. That, pending the making by Her Majesty, as aforesaid, of some more permanent provision for the Government of the said islands, His Excellency Sir Hercules George Robert Robinson, in pursuance of the powers in him vested, and with the consent and at the request of the said Tui Viti and other high Chiefs, the ceding parties hereto, shall establish such temporary or provisional Government as to him shall seem meet.

4. That the absolute proprietorship of all lands, not shown to be now alienated, so as to have become *bona fide* the property of Europeans or other foreigners, or not now in the actual use or occupation of some Chief or tribe, or not actually required for the probable future support and maintenance of some Chief or tribe, shall be and is hereby declared to be vested in Her said Majesty, her heirs and successors.

5. That Her Majesty shall have power, whenever it shall be deemed necessary for public purposes, to take any lands upon payment to the proprietor of a reasonable sum by way of compensation for the deprivation thereof.

6. That all the existing public buildings, houses, and offices, all enclosures and other pieces or parcels of land now set apart or being used for public purposes, and all stores, fittings, and other articles now being used in connection with such purposes, are hereby assigned, transferred, and made over to Her said Majesty.

7. That, on behalf of Her Majesty, His Excellency Sir Hercules George Robert Robinson promises: (1) That the rights and interests of the said Tui Viti and other high Chiefs, the ceding parties hereto, shall be recognized, so far as is consistent with British sovereignty and colonial form of government. (2) That all questions of financial liabilities and engagements shall be scrutinised, and dealt with upon principles of justice and sound public policy. (3) That all claims to titles of land, by whomsoever preferred, and all claims to pensions or allowances, whether on the part of the said Tui Viti and other high Chiefs, or of persons now

holding office under them or any of them, shall in due course be fully investigated and equitably adjusted.

In witness whereof, the whole of the contents of this instrument of cession having been, previously to the execution of the same, interpreted and explained to the ceding parties hereto, by David Wilkinson, Esq., the interpreter nominated by the said Tui Viti and the other high Chiefs, and accepted as such interpreter by the said Sir Hercules George Robert Robinson, the respective parties hereto have hereunto set their hands and seals.

Done at Levuka, this 10th day of October, in the year of our Lord 1874.

(Signed) (L.S.) CAKOBAU, R.,
Tui Viti and Vunivalu.

(L.S.) MAAFU.

(L.S.) TUI CAKAU.

(L.S.) RATU EPELI.

(L.S.) VAKA-VALETABUA, TUI BUA.

(L.S.) SAVENAKA.

(L.S.) ISIKELI.

(L.S.) ROKO TUI DREKETI.

(L.S.) NACAGILEVU.

(L.S.) RATU KINI.

(L.S.) RITOVA.

(L.S.) KATUVIVERE.

(L.S.) MATANITOEUA.

(Signed) (L.S.) HERCULES ROBINSON.

I hereby certify that, prior to the execution of the above instrument of cession, which execution I do hereby attest, I fully and faithfully interpreted and explained to the ceding parties hereto, the whole of the contents of the said document (the several interlineations on p. , line , and on p. , line of the manuscript having first been made), and that such contents were fully understood and assented to by the said ceding parties. Prior to the execution of the said instrument of cession, I wrote out an interpretation of the same in the Fijian language, which interpretation I read to the several Chiefs, who one and all approved thereof. A copy of such interpretation is hereto annexed marked (A).

Dated this 10th day of October, A.D. 1874.

(Signed) D. WILKINSON,
Chief Interpreter.

2. Immediately after the cession, Great Britain established the appropriate machinery to investigate and pass upon the validity of titles to land. This machinery consisted of a board of land commissioners whose findings and conclusions were subject to review by the Governor in Council. Somewhat later provision was made for rehearing on a proper petition before a final tribunal made up of the Governor and the members of his Council, with the Chief Justice of the Colony and the Native Commissioner sitting with them. It appears that between 1874 and 1882 more than 1,300 claims were thus considered and passed upon. Under the normal procedure where a claim was allowed a Crown grant covering the land involved was issued; where a claim was disallowed a Crown grant *ex gratia*, covering a portion of the land claimed, was sometimes made.

3. George Rodney Burt, a native citizen of the United States, came to the Fiji Islands in 1856, and, excepting the period from 1871 to 1874, hereinafter

more particularly referred to, resided in the islands continuously until 1894. He at first carried on a general trading business and later engaged in farming on a comparatively large scale for this region. In 1862 he took up land on the Upper Rewa River and is said there to have established the first real plantation in the islands. In 1866 he went to the Sigatoka River district and purchased a tract of land called Kavokai Nagasau, afterwards sold by him to a German subject who eventually obtained a Crown grant for it. In 1868 Burt purchased another tract known as Emuri and situated on the opposite side of the Sigatoka River from Kavokai Nagasau. It is the title to the Emuri tract, consisting of 3,750 acres, which is involved in this controversy.

4. The purchase of Emuri is evidenced by three deeds and a certificate, running to Burt and his partner Underwood who was subsequently bought out by Burt. These papers are set forth in the Appendix to the United States Memorial at pp. 187-195. The first deed was executed on February 27, 1868, for a consideration of \$200 in merchandise. The description of boundaries being found unintelligible, a second deed, dated June 2, 1868, was executed, ostensibly to remedy this defect. The consideration in this latter instrument is given as \$220 in trade, apparently including the \$200 previously paid. Still later a third deed, dated October 28, 1868, was obtained by Burt in order to extend the boundaries of the tract. The consideration named in this final transfer is \$320 which included the \$220 already paid, and \$100 in gold paid down on the execution of the deed. The certificate referred to deals with a complication arising from a conveyance by other parties to some part of the land in question, and is a declaration by the principal chief signing the deeds to the effect that such conveyance was null and void.

The grantors in these deeds were Ratu Kini, who seems to have been at the time the undisputed paramount and ruling chief of the territory in which Emuri lies, and certain other subordinate chiefs or heads of tribes supposed to have an interest in the land. While the evidence is to some extent conflicting on the question of the voluntary execution of the deeds by some of the grantors other than Ratu Kini, and as to the receipt of any part of the consideration by such other grantors, we are satisfied that Burt and Underwood secured from the ruling chiefs such title to Emuri as they had power and right to give.

5. Burt and his partner entered into possession of the land in February, 1868, and proceeded to make substantial improvements. Buildings were erected, planting was done, and about 200 head of livestock were put on the property, approximately 500 acres being thus actually occupied during 1868. (Memorial, p. 201.) This occupation which the Land Commissioners specifically found to be "substantial" (Memorial, p. 201), subsisted for some ten months when it was interrupted in January, 1869, by an incursion by a savage mountain tribe, described as the most unruly element in the

islands. The buildings were burned, the land was devastated, and Burt barely escaped with his life. He went back six months later, but was not permitted by the members of this mountaineer tribe to resume operations or gather his crop of cotton; and he was, therefore, obliged to go away from the plantation and seek other remedies. Evidence produced at the hearing shows that early in 1869 Burt appealed to the United States authorities and presented a bill for damages in the sum of \$69,000 for raids and depredations of the natives, and that an investigation of the matter was conducted by Commander Truxton of the U. S. Warship *Jamestown*. Commander Truxton found that Burt had been damaged to the extent of \$50,000, and referred the claim to Washington for such action as the United States Government might see fit to take. It also appears from the same evidence that at the beginning of April, 1869, Burt was in Sydney, New South Wales, attempting to raise money to resume operations in Fiji. He then went to the United States and during 1871 pressed his claim before the State Department in Washington. The proceedings before the Department were evidently protracted and it was not until June 1873 that the final answer of the State Department was given. In substance the United States Government declined to incur the expense or risk of collecting Burt's claim but it acceded to his request that the American consular agent in Fiji be directed to place no obstacle in his way.

In 1874 Burt is found back in Fiji. Conditions meanwhile in the islands had manifestly remained more or less chaotic. An attempt had been made to set up an effective government through the creation of a native confederacy, but it can hardly be said that public order and a settled government, satisfactory either to the natives or to the white population, had been established. Perhaps the best evidence of this is to be found in the Deed of Cession of October 10, 1874, which recites the obvious desirability "in the interests as well of the native as of the white population that order and good Government should be established."

The record contains a deed dated in July, 1874, from Burt to one Ives of Coldwater, Michigan, purporting to sell Emuri for a consideration of \$10,200. It seems to be a reasonable inference that this transaction was in effect a transfer of the property as security for a loan. Evidently Ives was a personal friend; Burt left him a small sum of money in his will. Ives is not shown ever to have been in Fiji or to have had any other interest in the islands; and in 1879 he executed a deed, releasing the property to Burt for the same consideration, to wit: \$10,200. Whether this is the proper construction of the transaction or not, we are of the opinion that for the purposes of this case the situation was not essentially affected by it.

In 1875, when the title stood in Ives, Burt filed with the Board of Land Commissioners a claim for a Crown grant in Ives' name but over Burt's own signature. This claim was not pressed and was never brought on for hearing. From 1875 on for a number of years the whole subject of land titles

was in the hands of the local British authorities, and claims were being considered in the order in which they were filed. The process was clearly a lengthy and somewhat complicated one. In 1879 a time limit was fixed for the filing of claims, and Burt in that year, and after the release to him from Ives, filed his claim to Emuri in his own right. In May, 1880 the Board of Land Commissioners disallowed the Burt claim but recommended that he be given an *ex gratia* grant for 160 acres. In July of that year the Governor in Council, in a decision which was not published at the time, approved the finding of the Land Commissioners but cut the *ex gratia* grant down to 100 acres, whereupon Burt went into possession of the 100 acres and made substantial improvements. In November, 1882, a petition for a rehearing was presented by the Native Commissioner on behalf of two natives claiming an interest in the land. This rehearing was not gazetted until March, 1883, and a decision was not given until April, 1884, when the claim was disallowed in its entirety, and Burt was excluded from the 100 acres which he had occupied a year and a half earlier.

6. On these facts the precise question before this Tribunal is whether Great Britain, as the succeeding Power in the islands under the Deed of Cession of 1874, failed in any respect to observe and carry out any obligation toward Burt which it may be properly said, from the point of view of international law, to have assumed. If Burt had at the time a valid title to the lands, it is plain that under all the circumstances the government was bound to recognize and respect it. In this connection we do not concern ourselves with the methods and the procedure adopted and employed in dealing with land titles. We have no criticism to make in this regard; on the contrary we feel that good faith is rightly attributable to the authorities at every stage and that the procedure was the customary and appropriate one for handling a situation of this nature. We look only to the general result which was reached and note that this result was the ultimate denial of Burt's right.

7. We therefore come to the particular question involved: whether Burt had at the time of the cession such an interest as to entitle him to invoke the obligation of the succeeding Power? His title to Emuri, resting as it did upon a conveyance from the ruling chiefs of the territory in which the land was situated, naturally depended upon the power of such chiefs to convey. It has been strenuously contended by counsel for Great Britain that in the then existing state of land tenures in Fiji, the chiefs acting alone could not convey the equivalent of a fee simple title to land. It is asserted that under the native custom a certain class, known as "taukeis" and defined as occupiers of the soil, had specific rights which could not be alienated without their express consent. It was, therefore, urged that inasmuch as the taukeis were not parties to the deeds, no valid title could have been conveyed. The record contains much in the way of opinion and argument upon this question. Various theories were advanced both at the time of the cession to Great Britain and afterwards. As time passed, the taukei view

commanded more and more attention; and some years after the cession seems to have been rather definitely taken by the local authorities. We think it must be recognized that in this period of transition from primitive native custom to the white man's law, it would be difficult, if not quite impossible, to lay down at any particular moment of time an exact definition of land polity in the Fiji Islands. We entertain grave doubts about the existence at any time of an intelligible system of feudal tenures or a consistent law of real property as we understand it among the natives. If there is any one fact which stands out with striking prominence during the entire period anterior to the cession it is that the law of the club pretty effectually dominated the situation. On the other hand there are well authenticated instances in which the chiefs themselves took fairly high ground in this matter and regarded themselves virtually as trustees for their people. They certainly assumed to dispose of land as they chose, but sometimes they did so with a commendable caution and in a spirit of great fairness to their subjects. We find Thakombau stating frankly that all that was needed in such a case was his own word and that whether he ought to give his word and would do so was the real question. In discussing the question of the cession to Great Britain with his own chiefs, he declared that they must consider it with the utmost care because as he said "what we do to-day cannot be undone to-morrow." It stands without dispute that the most solemn and consequential act affecting land and sovereignty in the islands was performed on the theory that the chiefs had the power to act. The British authorities of the day did not proceed hastily in this momentous transaction; they took advice on the point. They had before them the conflicting theories and deliberately adopted the view that the chiefs were competent to convey. Sir Hercules Robinson, Sir John Thurston and Sir Arthur Gordon may be considered on this record to have committed themselves clearly in this respect at the critical moment of the cession. We cannot help feeling that, on the whole case, the chiefs had the power, and that the distinction between want of power and possible abuse of power goes far towards reconciling the conflicting views. One hesitates to believe that the people on the ground, either whites or natives, in their practical dealings were or could under the circumstances be profoundly influenced by ideal considerations on the subject of land tenures. They were confronted not by a theory, but by an actual condition, and we do not feel called upon at this distance of time to take up the academic task of laying down and applying principles which would evidently run so decidedly against the current of actual dealings on the spot.

At this point it is proper to note that the Land Commissioners in 1880 solemnly held that if the signatures of the three chiefs attached to the deed of June 2, 1868, were "genuine and were obtained *bona fide*, they were undoubtedly the proper persons to have executed the grant."

8. Passing now to the question of the subsistence of Burt's right up to

the date of the cession to Great Britain, we have only to enquire whether a reasonable construction of the evidence shows any abandonment by him of his claim. The inference to our minds is irresistible that if he had not been dispossessed of Emuri by the wrongful, violent act of an uncontrolled and uncontrollable mountain tribe—an event which the Land Commissioners found to have no bearing upon his title—he would have continued in occupation, and it is not an unwarranted assumption to say that if the cession to Great Britain had taken place in 1869, Burt would have almost automatically received a Crown grant. We fail to find anything in the subsequent events which indicates any intention on his part to abandon; on the contrary he diligently prosecuted his claim so far as the circumstances and his limited resources permitted, and was at no stage of the proceedings in default. He stood upon his rights under the conveyances from the chiefs, and, on the view which we take, the Crown authorities, by refusing to recognize his title, failed to carry out the obligation which Great Britain, as the succeeding Power in the islands, must be held to have assumed.

9. The damages are necessarily unsusceptible of accurate determination. The Memorial of the United States presents the maximum possible claim. The demand is for \$232,929.50 with interest from April 25, 1884. We cannot avoid the impression that the bill as presented comprises a large element of speculative valuation and prospective profits, and we have reached the conclusion that upon the whole case full justice would be done by a lump award of £10,000 or its equivalent in dollars as of the date of the award.

NOW THEREFORE:

The Tribunal decides that the British Government shall pay to the United States the sum of £10,000.

The President of the Tribunal,
HENRI FROMAGEOT.

London, October 26, 1923.

CASE OF BENSON ROBERT HENRY (CLAIMS NO. 44 *ter.*)

Award rendered at London, November 2, 1923

The only question involved in this case was whether on the date of the cession of Fiji to Great Britain the claimant was the proprietor of the lands in question. *Held* that the evidence failed to discharge the onus of proof imposed upon the claimant, that it was reasonable to infer that the claimant was acting, not on his own behalf, but as a trustee or agent, and that there was no warrant for making an award in his favor.

This is a claim for compensation, preferred by the Government of the United States of America on behalf of one, Benson Robert Henry, an American citizen, arising out of the disallowance of his title to 480 acres of land in the Island of Fiji. We propose to state the facts of this case only in detail sufficient to explain the character of the claim and to elucidate our

decision which turns, as will presently appear, on one single question, namely, whether on October 10, 1874, the date of the cession of Fiji to Great Britain, the claimant was, in his own right, proprietor of the lands in question or any part of them.

In September, 1855, Commander Boutwell, of the United States Navy, whose ship was then visiting Levuka, imposed upon the Chief Cakobau the payment of about nine thousand pounds sterling as compensation for destruction and theft by Fijian natives of property belonging to American citizens. This sum was to be paid in twelve months. In 1867 only a small portion of it had been paid; and on July 12 of that year Cakobau signed a document hypothecating certain lands as security for payment of the balance.

In 1868 two gentlemen, by name Brewer and Evans, arrived in Fiji from Melbourne as agents for the Polynesia Company Limited of Melbourne, then about to be formed; and on July 23, 1868, a charter was granted them, as such agents, by Cakobau, who is chief signatory, with the ratification and confirmation of six principal chiefs under Cakobau.

By the material portion of that charter Brewer and Evans undertook on behalf of the said company to provide for the payment of the compensation, already referred to, to the United States of America; and, in consideration thereof, Cakobau ceded, granted and transferred to Brewer and Evans as trustees for the said proposed company about two hundred thousand acres of land as specified in the schedule. Paragraph 4 of the schedule is as follows:

4. Also Suva, its harbour, territories, and district, commencing from Lami, running along the coast towards Rewa, to the township of Kalabo, and running inland to the Waimanu. (Memorial, p. 259.)

The lands so described include those in respect of which Henry's claim arises.

This charter was accompanied by the following agreement:

The Company agree not to alienate any of the land until the whole of the American debt be paid. Should the amount not be paid within the time specified in the agreement of the Company with Dr. Brewer, the land reverts to King Thakombau. (Memorial, p. 259.)

On the following day, July 24, Evans and Brewer executed an agreement under seal, by which they undertook to pay the balance of the compensation due from Cakobau to the United States of America, the first instalment on their return to Melbourne, the second and final instalment on or before July 24, 1869. These instalments were in fact paid by the Polynesia Company Limited on July 13, 1869, and on November 19, 1870, respectively.

By a deed dated July 13, 1869, Cakobau and one Natika, with the ratification and confirmation of nine other chiefs and landowners, who also signed, conveyed to the Polynesia Company Limited certain lands at Suva to the

extent of about 27,000 acres, wherein were included the 480 acres in respect of which this claim for compensation is made.

The Polynesia Company Limited, having been formed, issued its regulations in November, 1869, under which land-warrants were to be issued to shareholders entitling them to "select" lands in districts declared by the company "open for settlement." The Suva lands were declared open for settlement. No shareholder might make more than one frontage selection in the Suva district; and any selection with a sea frontage was limited to 160 acres.

On August 12, 1870, Jacob Brache, a director of the Polynesia Company Limited, T. Copeland and the claimant Henry entered into the following agreement at Melbourne:

Articles of Agreement

Melbourne, Australia,

August 12, 1870.

We, the undersigned Jac. Brache and T. Copeland and B. R. Henry, do agree to associate ourselves together for the purpose of selecting land in Fiji from Shares and Land Warrants of the Polynesian Company Limited now held by the said Jac. Brache and for said purposes do hereby agree to send B. R. Henry to Fiji to select and Locate upon such Lands as he may deem best for agricultural purposes AND we further agree to give to B. R. Henry in consideration of his services when the association is entered in and agreed to, one third of one hundred and sixty of the above-named Shares, and Thos. Copeland agrees to pay J. Brache one hundred and forty pounds sterling for Eighty of the above shares if the said B. R. Henry reports that land can be cultivated in Fiji profitably and to the mutual advantage of each of the undersigned.

J. BRACHE

(in Trust.)

T. COPELAND

B. R. HENRY

(Memorial, p. 264.)

On the same day, in pursuance of this agreement, Henry signed a receipt in these terms:

Melbourne, August 12, 1870.

Received from Mr. Jacob Brache One hundred and Sixty shares in Polynesia Company Limited with Land Warrants for Six hundred and forty acres and also, Warrants for six Town lots such shares and Warrants to be held in trust by the Undersigned in accordance with the Articles of Agreement between Jacob Brache, Thomas Copeland and Benson Robert Henry dated August 12 1870 also another Warrant for six town lots by the Polynesia Company Limited in the name of Franz Bleaker and are in the name of Charles Brache all the above mentioned shares and Land Warrants to be held in trust by the Undersigned.

B. R. HENRY.

Numbers of issue of shares viz.: 504, 505, 507, 508, 509, 510, 511; 17 Land Warrants viz.: 382, 129A, 190A, 466, 468, 469, 470, 471, 472, 473, 214A, 189A. (Memorial, p. 268.)

This document is ungrammatical and confused; and the number of warrants specified in the foot-note is irreconcilable with the receipt itself. In our opinion, the first sentence of the receipt refers to the four land warrants Nos. 586, 587, 588 and 589 hereinafter mentioned.

In December, 1870, the claimant Henry and Copeland arrived in Suva, and selected four lots of 160 acres each, represented by warrants numbered 586 to 589 inclusive. Two contiguous lots, the warrants for which were numbered 586 and 588 fronted on the Tamavua River, and are hereinafter referred to as the Tamavua Block; two other contiguous lots, further South, fronting on Suva Harbor, are hereinafter referred to as the Harbor Block, and were covered by warrants 587 and 589.

Warrant No. 586 passed into the possession of Jacob Brache and was lost. The land held thereunder formed the subject matter of a conveyance from the Polynesia Company Limited to the claimant Henry dated April 12, 1875. Warrant No. 588 is made out to Charles Brache and his assigns, and is indorsed under date of December 23, 1870, by Henry, as attorney for Charles Brache, to Copeland. Warrant No. 587 is made out to Henry and his assigns and is indorsed with an assignment in blank by Henry, also under date of December 23, 1870, thus becoming negotiable. Warrant No. 589 is made out to T. Copeland and his assigns and is not endorsed. It is with the 480 acres under warrants 586, 587 and 588 that this claim is concerned.

On July 29, 1873, Henry and Copeland executed a power of attorney to Jacob Brache, authorizing him *inter alia*

... for us and in our names and as our names and as our acts and deeds to sign seal and deliver all deeds and documents receipts &c. and receive all moneys lands warrants and conveyances of land to which we may become entitled in virtue of our shares in the Polynesia Company Limited and Selections made by us in Suva, Fiji, under the regulations of the aforesaid Company, also to vote and act for us at all the meetings of the Polynesia Company Limited and to sue and be sued in our behalf (in all matters relative to the aforesaid company) . . . (Memorial, p. 279.)

On August 12, 1873, Jacob Brache, acting under this power, assigned all right title and interest of Copeland and Henry in both the Harbor and Tamavua Blocks to Charles Brache, to be held in trust for a certain proposed company until certain payments were made to Jacob Brache by Henry and Copeland. There is no evidence that these payments were ever made.

In April, 1874, Henry pledged the Harbor Block warrants, Nos. 587 and 589, to one Simmonds for forty-five pounds, and shortly afterwards in that year left Fiji; nor, except that he is alleged to have been subsequently in communication with his attorney in Fiji, Mr. Scott, is he heard of again till 1898, when, in connection with proposed action by the United States State Department on his behalf in the matter of his Fiji land claims, he swears in Oregon an affidavit containing statements of doubtful accuracy.

In October, 1874, Fiji was ceded to Great Britain and the Lands Com-

mission was instituted by Great Britain to inquire into existing land titles in Fiji in accordance with the undertaking contained in the deed of cession.

In December, 1874, Jacob Brache redeemed the pledged Harbor land-warrants from Simmonds, who inclosed a receipt to Brache in the following letter:

Receipt for £43 17s. 5d.

Mr. Jacob Brache.

Dear Sir,

December 7, 1874.

I hereby acknowledge to have received from you (and for which you have a separate receipt) the sum of £43 17s. 5d. for money advanced by Mr. W. Simmonds, of Suva, to Mr. B. R. Henry, of Suva, on certain warrants of land selected by him for you, and which said warrants I have handed to you.

Yours truly,

C. SIMMONDS.

(British Answer p. 9.)

The suggestion underlying this letter, that the original selection of Suva lands by Copeland and Henry was made on behalf of Jacob Brache, is repeated in another letter written to Jacob Brache by Copeland, which is in these terms:

My dear Mr. Brache,

Levuka, June 21, 1875.

Yours of the 31st ultimo to hand. I enclose you the power of attorney, signed as requested, and sincerely trust you will come out of the Polynesia "spec" all right.

T. A. COPELAND.

P.S.—The Governor and Land Commissioner have arrived. I shall put in my application for the Suva Block, and send you full power of attorney. It is the only way left to secure you the block. (Answer, p. 10.)

And again, in a letter to the Commissioner of Lands, Fiji, dated Melbourne, September 28, 1875, Jacob Brache, referring to Copeland's 160 acres of the Harbor Block, writes: ". . . As I am the holder of the said warrant under assignment, the title for such land must naturally pass in my hands." (Answer, p. 12.)

Some correspondence between Jacob Brache and the Lands Commission ensued; and on January 13, 1876, Jacob Brache, as attorney for one Alfred Asbeck, presented a petition for a Crown grant in respect of the Harbor Block alleging therein that Asbeck on September 1, 1873, had purchased these lands from Copeland and Henry and had paid 160 pounds sterling for them. This petition was heard in March, 1878, and, no evidence being offered, was disallowed.

On January 28, 1880, Jacob Brache preferred two more petitions to the Lands Commission, one, as attorney on behalf of Henry and Copeland, in respect of the Harbor Block of 320 acres; another, on behalf of Henry, in respect of the Tamavua Block of 320 acres. The two petitions were heard and were disallowed by the Governor-in-Council on January 31, 1882. The

Tamavua Block petition was reheard and dismissed on August 21, 1883. In connection with the rehearing of the Harbor Block petition, a question was raised as to the authority of Mr. Jacob Brache to represent Henry and Copeland. The point was argued before the Council on November 23, 1886, when Mr. Scott, as counsel for the petitioners, states that he appeared in a twofold position, representing Brache (1) as attorney for Henry and Copeland; (2) as being pecuniarily interested in the claim. (Answer, pp. 194, 195.) This petition, as being one in which the Crown had an interest, was referred, under ordinance XXV, of 1879, to the Acting Chief-Justice, who delivered an opinion to the effect that the claim be disallowed. This opinion was confirmed and the petition disallowed by the Governor-in-Council on September 12, 1887. These appear to us to be all the facts necessary for the decision of this claim.

For the purpose of our decision we make the following assumptions:

1. That Cakobau and his co-signatories gave a valid title in the Suva lands to the Polynesia Land Company Limited.
2. That the Polynesia Land Company Limited gave to their transferees valid titles in the Suva lands.
3. That a land warrant was a good muniment of title, whether perfected by a conveyance or not.
4. That no breach of the regulations of the Polynesia Land Company Limited had been committed.
5. That the title of the transferees of the Polynesia Land Company Limited was not affected by the fact that the payment of the second instalment of the indemnity by the Polynesia Land Company to the United States of America was made sixteen months after the appointed date.

We now address ourselves to the decisive question:

Was the claimant Henry on October 10, 1874, the date of the cession of Fiji to Great Britain, proprietor, in his own right, of the 480 acres of land in question or of any part of them?

The onus of satisfying the Tribunal on this point lies on the claimant.

Our answer to that question is in the negative.

The reasonable inference in our opinion to be drawn from Henry's operations and conduct, viewed in the light of the documents, and, in particular, of—

- (1) the land warrants themselves;
- (2) the agreement between Jacob Brache, Copeland and Henry dated August 12, 1870 (Memorial, p. 264);
- (3) the receipt signed by Henry dated August 12, 1870;
- (4) the assignment by Jacob Brache to Charles Brache dated August 12, 1873 (Memorial, p. 316);

is that Henry was acting from the beginning, whether he be correctly described as trustee or as agent, not on his own behalf. In any case, the

evidence falls far short of discharging the onus of proof which is imposed upon the claimant.

But, further, even if it be assumed that, in the first instance, Henry acquired these 480 acres of land for himself, having regard to the facts and documents already referred to and to the sale on September 1, 1873, for valuable consideration of Henry's 160 acres of the Harbor Block to Alfred Asbeck (Answer, p. 14), we cannot, in the absence of any explanation of these transactions by Jacob Braché, find ground to warrant us in making any award in favor of the claimant.

NOW THEREFORE:

The decision of the Tribunal in this case is that the claim of the Government of the United States of America be disallowed.

The President of the Tribunal,
HENRI FROMAGEOT.

London, November 2, 1923.

CASE OF THE HEIRS OF JOHN B. WILLIAMS (CLAIM NO. 44 gr.)

Award rendered at London, November 8, 1923

As regards two parcels of land involved in this claim, *held* that no title sufficient to justify an award could be found. As regards a third parcel, the title held to be good and claimant awarded damages for the refusal of British authorities to recognize it.

This claim is preferred by the Government of the United States of America on behalf of the heirs of J. B. Williams, asking for compensation arising out of the disallowance of that gentleman's title to certain lands in Fiji.

The lands in question are:

- (1) 100 acres in the Island of Laucala;
- (2) The Island of Nukulau, 20 acres;
- (3) 1,000 acres at Nukubalavu in the Island of Viti Levu.

Mr. J. B. Williams appears to have gone to Fiji about the year 1840; he became United States Commercial Agent there, and died there in 1860.

1. As to the *Laucala* land, the claimants produce four documents as the foundation of Williams' title.

The first is a conveyance, dated June 1, 1846, from the Chief Cokana Uto or Phillips to Williams and Ichabod Handy, for a consideration of \$50.20 in trade. (Memorial, p. 329.) This deed is endorsed by mark, by two natives, Koromoves and Korotabaleo, who as "landholders, acknowledged and consented to the sale." These two persons similarly endorsed the Nukulau conveyance, and are referred to by Mr. Carew, the Lands Commissioner, in his report on that petition, in the following terms:

They appeared to have followed Cokanauto about for the purpose of confirming sales of land made by him whether his own property or that of others and it appears from evidence in other claims to have been a matter of indifference to them. (Memorial, p. 393.)

The second Laucala deed is a conveyance, in consideration of some articles in trade, from Koquaraniquio to Williams and Handy, dated September 25, 1846.

Both Cokana Uto and Koquaraniquio at the respective dates of their conveyances were rebels against and fugitives from the paramount chief of Rewa.

There is no evidence of occupation of Laucala by Williams or anyone else in right of Williams till in the year 1855 or 1856. That occupation took place under the following circumstances.

In September, 1855, the United States ship *John Adams*—Commander Boutwell—visited Fiji, in order to take punitive measures against the natives for the destruction and theft of American citizens' property, amongst such property being Mr. Williams' house on Nukulau. Commander Boutwell seized the occasion to investigate Williams' title to Laucala which was in dispute; and in his report to the Secretary of the Navy (Memorial, p. 362), after referring to the recent disturbances, he says:

On learning these facts I determined to make the natives build our consul another house; pay the value of \$1,200 in pigs, gum, and fish, for the loss of his property and reinstate Mr. Williams in possession of his land, the two small islands of Nukulau and Lauthala, which he had purchased and had deeds for. I examined the interpreter who had made the purchase for the consul and his deeds, (and) decided that the land belonged to our consul, but was informed by Mr. Moore that the chiefs of Rewa and Vutia disputed the claim of Mr. Williams and Mr. Handy (an American) to this land. On September 18 I had an interview with the chiefs of Rewa on board, who acknowledged that the land had been sold to Mr. Williams, and on the 19th I had an interview with the chiefs of Vutia, who not only consented to Mr. Williams' claim, but counter-signed the deeds.

These countersignatures, by mark, appear under an indorsement on the two deeds referred to testifying that: "This matter of the land has been settled to our satisfaction."

Commander Boutwell also indorsed and signed statements to the effect that the title of Williams and Handy was, in his opinion, good.

Without enquiring in detail into the actions of Commander Boutwell, and quite apart from native evidence, the circumstances in which these indorsements were made appear to us largely to rob them of value as evidence of free assent to the conveyances in question. Nor is Commander Boutwell's opinion of Williams' and Handy's title fortified by the fact that, according to his own report, he interviewed the chiefs after having determined to reinstate Mr. Williams in his disputed property.

But Williams was not yet satisfied as to his title; and two more documents were drawn up in identical terms and signed on the same day, the first by a Vutia chief, by name Ko Ra Daka Waqa, dated September 2, 1856, the other, by another Vutia chief, by name Tuni, dated October 2, 1856, and witnessed by one Charles Rounds. The following is the text of the earlier document:

I, Ko Ra Daka Wanka, one of the Chiefs of Vutia do hereby acknowledge the purchase and payment by John B. Williams and Ichabod Handy of all that tract and parcel of land called Lauthala Point, or Island; all that part lying south of the creek called Vunia Vaudra which communicates with Rewa River and the Bay on the West side of Lauthala the said creek being navigable for boats at high water, and being the first approach from the anchorage in the roads; the receipt for the goods in payment whereof was previously acknowledged as per deed granted the first day of June and twenty fifth day of September in the year 1856. To have and to hold the above-released premises to the said John B. Williams and Ichabod Handy their heirs and assigns to them and their use and behoof for ever.

KO RA DAKA WAQA ^{his} X
mark.

Williams died on June 10, 1860, and Dr. Isaac Mills Brower took charge of his estate and granted leases of the Laucala lands, as Williams had done in some instances between 1856 and 1860.

After the cession of Fiji to Britain in 1874, the Lands Commission was instituted to investigate and report on the titles to land granted by natives to foreigners; and in 1875, the heirs of J. B. Williams presented a petition for a Crown grant of the Laucala lands in question. It was heard and disallowed in 1878. The petition was reheard in 1880 and the disallowance affirmed. (Answer, p. 100.)

1. Neither of the two grantors under the deed of 1846 was, at the respective date of those deeds either *de facto* or *de jure*, in a position to give a good title to the Laucala land.
2. The indorsements on the two deeds of 1846 add nothing to their legal effect.
3. The title to these lands was in dispute in September, 1855.
4. There was no occupation of the Laucala land by Williams or on Williams' behalf till late in 1855 or in the year 1856.
5. The two deeds of 1856 do not affect Mr. Williams' title which stands or falls by the two conveyances of 1846.

It is pointed out in the Memorial (p. 58), that "four subclairs to land on

Laucala, obtained by purchase from Williams and presented by Messrs. Burt, Hennings, and Ryder, were allowed," the suggestion being that there is some inconsistency between disallowing the title of Williams and allowing titles of purchasers from him. There is no such inconsistency. These three purchasers proved substantial occupation and, thereupon, they were entitled under the principles followed in Fiji land cases, even in the absence of strict title, to a Crown grant *ex gratia*.

With regard to occupation of Laucala by Williams or in his right, no Crown grant *ex gratia* was made; and the refusal of such a grant is not a matter for the consideration of this Tribunal. It may be said that the fluctuating fortunes of native chiefs in civil war afford but slender foundation for any conclusion in one direction or the other as to their right to convey lands, but, apart from that feature of this claim, we think that no title is proved sufficient to justify an award in favor of the claimants. The claim in the Laucala case is, therefore, dismissed.

2. With regard to the *Nukulau* claim, it is to be noted that the Lands Commissioner reported favorably upon it, though it was disallowed by the Governor-in-Council both on the report and after rehearing. With this exception, the facts are substantially the same as in the Laucala claim.

The deed alleged to found Williams' title is a grant of the Island of Nukulau by Cokana Uto or Phillips to Williams and Andrew Breed and Samuel T. House, for a consideration of £30 in trade, and dated June 8, 1846. (Answer, p. 101.) Qarainqio indorsed the deed on September 11, 1848:

Nukulau, September 11, 1848.

I acknowledge and consent to the sale of the within-named land, Nukulau, payment having been made to Cakanauto, myself one piece blue and orange print, twelve dollars.

QARAINQIO,
his X mark.

Witnesses:

JOHN H. DANFORD.

DAVID WALKER.

(Answer, p. 102.)

At these respective dates Cokana Uto and Qarainqio were rebels against and fugitives before the paramount chief of Rewa and, therefore, unable to give good title to Nukulau.

Koromovei and Korotabalea endorsed on this conveyance an acknowledgment and consent similar to that on the Laucala deeds.

Commander Boutwell endorses this deed as follows:

Having examined this deed I consider John B. Williams' title to the land good.

E. B. BOUTWELL,
Commanding U. S. S. *John Adams*.

Lauthala Roads,
September 17, 1855.

Our observations therefore on the *Laucala* deeds of 1846 and our first three findings in that case apply to this claim also.

The claim therefore in this case is dismissed.

3. *Nukubalavu*.—This claim is different.

Kaibau and Koroiduadua, the grantors of this land under a conveyance of October 12, 1846, for a consideration of \$46 in trade, were in a position to give a good title.

There is little or no evidence of dispute about the property, and, probably in consequence of that very fact, Commander Boutwell plays no part in this claim. As in the *Nukulau* case, the conveyance was to Williams, Breed and House, the two latter names having been erased wherever they occur throughout the deed, presumably by Williams who profited thereby. Having regard to the fact that these same erasures occur both in the *Nukulau* and the *Nukubalavu* deeds at an interval of four months, they must have been made after the execution of the latter deed. There is no evidence that Williams survived Breed and House. If, therefore, this deed were taken as creating a joint tenancy in the strict sense, this would be sufficient to defeat this claim. But in our opinion, it would be fairer and more in consonance with the real facts of the case and the intentions of the parties to treat the deed as creating a tenancy in common, with the result that the heirs of J. B. Williams are entitled only to one-third of the compensation which we find to be due in respect of the whole property. The range of value is very wide. The claim is for \$10,000; the valuation of Messrs. Page, Scott and Joske in 1882 (Memorial, p. 390) is 2,000 pounds; that of Mr. Allardyce in 1898 (Answer, p. 26) is as follows:

Nukubalavu.—This block is situated on the south coast of Vanualevu and is of no particular value. If put up to auction it would not fetch above a few pounds.

We think that the justice of the case would be met by an award of a lump sum of £150.

NOW THEREFORE:

The decision of the Tribunal in these cases is:

- (1) *Laucala*.—That the claim of the Government of the United States of America be disallowed.
- (2) *Nukulau*.—That the claim of the Government of the United States of America be disallowed.
- (3) *Nukubalavu*.—That the British Government shall pay to the Government of the United States of America the sum of £150.

Dated at London, November 8, 1923.

The President of the Tribunal,
HENRI FROMAGEOT.

CASE OF ISAAC M. BROWER (CLAIM NO. 44)

Award rendered at London, November 14, 1923

Helā, that the claimant had a proper title which should have been recognized by Great Britain, but as the islands which were the subject of the claim had only a speculative and precarious value only nominal damages were awarded.

This claim is presented by the United States on behalf of Isaac M. Brower for the sum of \$1,250, with interest. It arises out of the disallowance of Brower's application for a Crown grant to certain lands in Fiji. The facts are as follows:

In 1863, two American citizens, Thompson and Gillam, purchased from a Fiji chieftain known as Tui Cakau, a group of small islands, six in number, forming a part of the Fijian group. The islands were designated on the charts as the Ringgold Islands, the native appellation being Yanuca-i-Lau, meaning "bad islands." They were not inhabited. Not more than three of them were of any potential value, the rest being described as "mere rocks" (Memorial, p. 439), or "sand banks" (Memorial, p. 424). The natives appear to have gone there intermittently to get turtles.

The circumstances surrounding the purchase were somewhat peculiar. Gillam and Thompson came to Fiji apparently with the idea that buried treasure existed on these islands. They first consulted with Brower, United States Consul, who directed them to Tui Cakau as the owner. They then bought the islands from Tui Cakau, paying \$250, in Chilean ten-dollar gold pieces. The purchasers at once went to the islands and spent about two months digging over the ground evidently in a vain search for treasure. At the end of this period they abandoned the enterprise and went away from Fiji, leaving in Brower's hands a blank deed of sale. Brower subsequently sold under this deed to one Barber, who put an agent named Macomber in charge to maintain a sort of constructive possession with the intention of some day going there to occupy them. (Memorial, p. 423.)

In 1870, Brower bought a half interest from Barber for the sum of £30, and in 1873, the remaining half interest was sold to one Halstead.

On October 23, 1875, immediately after the cession of Fiji to Great Britain, Brower and Halstead applied for a Crown grant. In November, 1880, the application was denied by the Land Commissioners on the grounds of—

- (1) Insufficient and fictitious occupation;
- (2) Long-continued adverse occupation. (Memorial, p. 421.)

In 1881, at the request of Brower, there was a rehearing at which further evidence was adduced, and in October of that year a final judgment of disallowance was rendered.

Upon the final hearing in 1881, the attorney for Brower and Halstead asked leave to amend the petition and to substitute the names of two half-castes called Valentine for that of Brower; and the amendment was allowed. (Memorial, p. 431.)

Some three years previously it seems that Brower had entered into some arrangement, the terms of which are not found in the record, for the disposal of his interest to the Valentines for the sum of £100. After the failure to secure a Crown grant the Valentines sued Brower in the Supreme Court of Fiji for the repayment of the £100, and in August, 1884, recovered judgment. This phase of the subject is dealt with as follows in the report made by George H. Scidmore, United States Special Agent:

Previous to the hearing of this claim by the Fiji Land Commission Brower entered into a contract with William Valentine and his two brothers (half-castes by an American father and native mother) for the sale of his (Brower's) interest in the islands, and received from the Valentines £100. Brower prosecuted the claim before the Commission in his own name, but failed to obtain a Crown Grant. He was subsequently sued in the Supreme Court of Fiji by the Valentines for the repayment of said £100, and, in August, 1884, they recovered judgment for that amount, with interest, and costs. (Memorial, p. 433.)

On these facts it is contended by counsel for Great Britain: first, that good title to the islands was never secured because Tui Cakau had no power to dispose of them; and second, that in any event no recovery in Brower's favor can be had because before final judgment in the proceedings for a Crown grant he had withdrawn in favor of the Valentines.

On the question of the chief's power to give title we are of opinion that the facts bring this case within the principles laid down in the decision of the Burt case already made by this Tribunal. Tui Cakau was conceded to be the paramount chief of the district in which the Ringgold Islands lay. Quoting again from the Scidmore report:

Tui Cakau was paramount chief of Cakau-drove, and these islands were within his dominions. His capricious will was the supreme law there, and the time, labor, property, wives, children, and lives of his people were at his mercy. (Memorial, p. 434.)

The final judgment of disallowance states:

We do not doubt that the purchase in question was honestly made nor that any rights which attach to the possession of the deed has, after passing through several hands properly vested in the present claimants. We are however of opinion that Tui Cakau had no right to sell these lands without the consent of the taukeis, . . . (Memorial, p. 431.)

The right of the paramount chiefs to sell without taukei consent has been fully dealt with in the opinion in the Burt case already mentioned.

It is hardly necessary in this connection to discuss the subject of occupation, for a careful examination of the record discloses nothing rising to the dignity of effective occupation either by natives or by the purchasers, although there is evidence indicating that the latter took steps to maintain possession by placing their agents from time to time upon the islands, and that Tui Cakau at their request on one or two occasions undertook to keep the natives off. The islands were to all intents and purposes uninhabited.

We consider therefore, that the title was vested in Brower and Halstead at the time of the cession to Great Britain.

The issue founded upon Brower's alleged withdrawal from the situation requires especial attention. Did the subsequent proceedings, particularly the Valentine transaction, operate to defeat his claim? We are somewhat in the dark as to just what took place between Brower and the Valentines. According to Scidmore, a contract for the sale of Brower's interest was entered into. Whether there was an out and out conveyance by deed is not clear. It may have been an arrangement conditioned upon the final issuance of a Crown grant. Whatever it was we may assume that the Valentines were regarded as the real parties in interest at the time of the substitution in 1881. The effect of the transaction was manifestly a matter of dispute; otherwise the subsequent litigation between Brower and the Valentines would not have taken place. It is contended that if Brower made a sale and the title failed because of the refusal to issue a Crown grant a proper pleading of this act of the state would have been a perfectly good defence to the Valentine suit for recovery of the purchase price and that therefore title cannot be regarded as having properly re-vested in Brower. The difficulty with this contention is that facts sufficient to support it are not before us. We do not know what the precise arrangement with the Valentines was; we do not know whether they brought suit for damages for breach of contract to convey or whether they sued for recovery of the purchase money under some condition expressed in the deed. We do not know whether the plea above referred to was made and disallowed by the court, or whether Brower neglected to take advantage of such a defence, if it existed. It seems idle to speculate on these matters in the absence of the facts. The most reasonable view is that Brower did try to dispose of his interest; that the transaction was upset by the failure to secure a Crown grant and that the final result was to place him exactly where he stood in the beginning. The effort to sell was abortive and he was obliged to pay back what he had received. We find no evidence that the title definitely passed to the Valentines and remained in them; but their complete disappearance from the situation raises an obvious presumption against the supposition that Brower's interest actually passed to them.

We hold that the title to a half interest in the Ringgold Islands was properly vested in Brower at the time of the cession to Great Britain; that this title should have been recognized by Great Britain as the succeeding power in the islands under the obligation assumed at the time of the cession; and that Brower was the holder of the title at the date of the filing of the claim against Great Britain by the United States.

Passing to the question of damages, it is plain that the islands forming the subject matter of this claim had only a speculative and precarious value. Nobody had ever taken the trouble to occupy and settle upon them. There is no evidence of any improvements. In their natural state they apparently formed only a fishing ground for turtle. The chart indicates that they were

little more than reefs or points of rock. Their value apparently rested entirely upon a rumor of buried treasure. The original purchase for a fantastic consideration paid in gold pieces is explainable on no other theory. The subsequent dealings were clearly based upon the same speculative consideration. The treasure tradition evidently persisted and the same fictitious valuation is reflected in the purchase by Brower of a half interest for £30, and in the purported transfer of that interest to the Valentines for £100. With the lapse of time the islands as such did not assume any real value, for as late as 1898, Mr. Allardyce, the Colonial Secretary and Receiver-General, made the following report upon them:

These are six small islands of the Ringgold group. They are mere islets with a few cocoanut trees on them. They are situated in a remote portion of the Colony at a distance of about 180 miles from Suva. If put up to auction, I doubt if there would be a single bid for them. (Answer, p. 11.)

In these circumstances, we consider that notwithstanding our conclusion on the principle of liability, the United States must be content with an award of nominal damages.

NOW THEREFORE:

The Tribunal decides that the British Government shall pay to the United States the nominal sum of one shilling.

Dated at London, November 14, 1923.

The President of the Tribunal,
HENRI FROMAGEOT.

EASTERN EXTENSION, AUSTRALASIA AND CHINA TELEGRAPH COMPANY,
LIMITED (CLAIM No. 36)

Award rendered at London, November 9, 1923

Not only does the cutting of cables appear not to be prohibited by the rules of international law applicable to sea warfare, but such action may be considered to be implicitly justified by that right of legitimate defense which forms the basis of the rights of any belligerent nation.

The neutral owner of a cable which has been cut by a belligerent has no absolute right to compensation. In this case the company could not act as a neutral without violating its concession.

Cables which afford communication between different countries and nations are no more international in character than a packet boat or any other ship trading between various countries.

It is perfectly legitimate for a government, in the absence of any special agreement to the contrary, to afford to subjects of any particular government treatment which is refused to subjects of other governments, or to reserve to its own subjects treatment which is not afforded to foreigners. Some political motive, some service rendered, some traditional bond of friendship, some reciprocal treatment in the past or in the present, may furnish the ground for discrimination.

It is not the duty of this Tribunal to lay down new rules governing the matter of cable cutting.

This is a claim presented by His Britannic Majesty's Government on behalf of the Eastern Extension, Australasia and China Telegraph Company

Limited, a British corporation, for a sum of £912.5s. 6d., being the amount which this company had to expend upon the repair of the Manila-Hong Kong and the Manila-Capiz submarine telegraph cables which had been cut by the United States naval authorities during the Spanish-American War in 1898.

The facts are as follows:

Under concessions granted by the Spanish Government and dated respectively December 14, 1878 and April 14, 1897, the Eastern Extension Company had laid down certain submarine telegraph cables connecting Manila and Hong Kong and Manila and Capiz, which the company was operating in 1898.

In April, 1898, war broke out between the United States and Spain, and on May 1, 1898, the United States naval forces, under the command of Commodore, afterwards Admiral, Dewey, entered Manila Bay and destroyed or captured the Spanish warships lying in that harbor. On the same day (United States Answer, p. 14, Exhibit 5) Commodore Dewey, through the British consul at Manila, proposed to the Spanish Captain General that both the United States and the Spanish authorities should be allowed to transmit messages by cable to Hong Kong. That proposition having been refused, on the morning of the following day, viz., on May 2, 1898, the Manila-Hong Kong cable was cut by order of the American Commodore, this cutting being effected within Manila Bay and consequently within the territorial waters of the enemy.

On May 10 the company, acting on a formal order of the Spanish Government under the provisions of the concession above referred to, sealed the end of the cable at Hong Kong, thereby preventing any use of the cable by the United States forces. Subsequently, the United States Navy Department proposed to the company to reestablish cable communication between Manila and Hong Kong, and the company refused, informing the American Navy Department that the company was under the orders of the Spanish Government and that the transmission of messages from the Philippine Islands to Hong Kong had been prohibited by that government (United States Answer, p. 12, Exhibit 2). Furthermore, as appears from the oral argument on behalf of His Britannic Majesty's Government (Notes of the 11th sitting, p. 251), the British Government themselves, acting in the interests of shipping, subsequently asked the Madrid Government if they would consent to the reopening of the cables; but the Spanish Government refused to accede to this request, except on terms which the United States could not accept.

On May 23 the Manila-Capiz cable was cut, also inside Manila Bay.

These facts are not contested; and further it is admitted on behalf of Great Britain that the severance of the cable between Manila and Hong Kong, as well as between Manila and Capiz, was a proper military measure on the part of the United States, taken with the important object of inter-

rupting communication whether with other parts of the Spanish possessions in the Philippine Islands or with the Spanish Government and the outside world.

The question is whether or not the United States Government is bound to pay to the company, as damages, the cost incurred by the company in repairing the cables.

The British Government admits that there was not in existence in 1898 any treaty or any rule of international law imposing on the United States the legal obligation to pay compensation for the cutting of these cables; but they contend that, under Article 7 of the special agreement establishing this Tribunal, such compensation may be awarded on the ground of equity, and that the United States Government, having paid compensation to some other foreign cable company for similar cuttings during the same war, is, therefore, legally bound to compensate the British company and, finally, that in the absence of any rule of international law on the point, it is within the powers, if it be not the duty, of this Tribunal to lay down such a rule.

The United States Government contends that the cutting of the cables by its naval authorities was a necessity of war giving rise to no obligation to make compensation therefor; that the United States were entitled to treat the said cables as having the character of enemy property, on the ground that their terminals were within enemy territory and under the control of the enemy's military authorities, and that the sealing of the terminal at Hong Kong, on neutral territory, was a hostile act of itself impressing this cable with enemy character. Further, the United States Government contends that there is no rule of international law imposing any legal liability on the United States, but that, on the contrary, the action of the United States naval authorities and the refusal to pay compensation are justified by international law and that the United States Government is not bound to pay compensation to the British company merely because more favorable treatment was meted out to another foreign company, the facts underlying whose claim were, in any case, different. Further, the United States Government say that it is not the duty, nor within the power, of this Tribunal to lay down any new rule of international law, but only to construe and apply such rules or principles as existed at the time of the cutting of these cables.

It may be said that Article 15 of the International Convention for the Protection of Submarine Cables of 1884, enunciating the principle of the freedom of governments in time of war, had thereby recognized that there was no special limitation, by way of obligatory compensation or otherwise, to their right of dealing with submarine cables in time of war. In our opinion, however, even assuming that there was in 1898 no treaty and no specific rule of international law formulated as the expression of a universally recognized rule governing the case of the cutting of cables by belligerents, it cannot be said that there is no principle of international law applicable.

International law, as well as domestic law, may not contain, and generally does not contain, express rules decisive of particular cases; but the function of jurisprudence is to resolve the conflict of opposing rights and interests by applying, in default of any specific provision of law, the corollaries of general principles, and so to find—exactly as in the mathematical sciences—the solution of the problem. This is the method of jurisprudence; it is the method by which the law has been gradually evolved in every country resulting in the definition and settlement of legal relations as well between states as between private individuals.

Now, it is almost unnecessary to recall that principle of international law which recognizes that the legitimate object of sea warfare is to deprive the enemy of those means of communication, which the high seas, in their character as *res nullius* or *res communis* afford to every nation. The user by the enemy of that communication by sea, every belligerent, if he can, is entitled to prevent; subject to a due respect for innocent neutral trade; he is even entitled to prevent its user by neutrals, who use it to afford assistance to the enemy either by carrying contraband, by communicating with blockaded coasts, or by transporting hostile despatches, troops, enemy agents, and so on. In such cases the neutrals do not, properly speaking, lose their neutral character; but their action itself loses that character, such action being, as it is said, impressed with a hostile character. Thus it may be said that a belligerent's principal object in maritime warfare is to deprive the enemy of communication over the high seas, while preserving it unimpeded for himself.

It is difficult to contend in the same breath that a belligerent is justified by international law in depriving the enemy of the benefit of the freedom of the high seas, but is not justified in depriving him of the use of the seas by means of telegraphic cables.

Not only does the cutting of cables appear not to be prohibited by the rules of international law applicable to sea warfare, but such action may be said to be implicitly justified by that right of legitimate defence which forms the basis of the rights of any belligerent nation.

It is contended, however, that the cutting, however legitimate, may create an obligation to compensate the neutral owner of the cable; and various instances are, or may be, given of legitimate acts which, it is said, do create such an obligation. We do not think that the instances given furnish a just analogy. In those instances, the right is not absolute, but limited; and is in reality only itself acquired in consideration of the payment of compensation; and has no existence as a right apart from the obligation to make compensation. Such is the case in respect of requisition, either for the purposes of ownership or user; of expropriations, or, to take a case from maritime law, of the exercise of the right of angary.

Reference has been made to certain opinions (Dupuis, *Revue Générale du Droit International Public*, Vol. 10, p. 546) which seem to suggest that in the

case of cables which connect enemy and neutral territories and are the property of neutrals, the right of a belligerent to cut ought to be exercised subject to the obligation to pay compensation, since it is not certain that the transmission of messages by the enemy over the cable has the consent of the neutral owner, against whom the belligerent is acting, and who may in fact be innocent. In such a case, it is suggested, the neutral owner of a cable is in the same position as the neutral owner of cargo which may or may not be used for warlike purposes and against whom there is no evidence of intention to assist the enemy, and who, if such cargo be seized, must be paid for it. In the first place it is a matter of controversy whether or not such rule as to the neutral owner of such cargo in fact exists; secondly, such a rule, if it does exist, is in practice inapplicable to submarine cables, having regard to their peculiar character; thirdly, the facts postulated for the application of the suggested rule do not exist in this case.

The cables in this case were laid and operated, not only by permission or concession granted to a neutral by the Spanish Government, but they were, under those concessions, legally to be considered from the Spanish point of view as "works of public utility" (Schedule of Conditions of March 28, 1898, Article 3). The Spanish Government expressly reserved to itself "the right of organizing over the cable service such a system of supervision as it deems best." *Ibidem*, Article 4; Schedule of Conditions of December 14, 1878, Article 8). The receiving and transmitting stations had to be situated in the offices of the state (Conditions of 1878, Article 6). The Spanish Government had reserved the right, belonging in any case to any state over its own national telegraph lines, and recognized by international telegraph conventions, of suspending the transmission of messages dangerous to the security of the state (Conditions of 1878, Article 12); and it was expressly stipulated that the operation of the cable was to be carried out at the risk of the company which received in exchange certain privileges, a certain monopoly, and certain exemptions from taxes and imposts (Conditions of 1898, Article 3). Finally, the order given to the company to seal the terminal at Hong Kong and the mere fact that the company considered itself legally bound to obey that order, notwithstanding the fact that this terminal was in a neutral country, the refusals of the company and the Spanish Government, made respectively to the United States Government and to the British Government, to reopen the lines, appear to be conclusive evidence that the company was in reality operating, not in the character of a private neutral commercial undertaking subject only to certain local regulations, but as an actual Spanish public service, as completely under the authority of the Spanish Government as would have been any state service. In such circumstances it does not seem possible to regard this company as ignorant of, or as not having consented to, the use of the cable for military purposes by the Spanish military authorities, or as entitled to avail itself of neutral character in order to claim compensation for the cutting of its cables. The

fact is that this company could not act as a neutral, without violating its concession.

It has been said (see the opinion of Sir Robert T. Reid and Mr. Henry Sutton, British Memorial, pp. 12 and 13) that if the cables had been the ordinary property of neutrals, that fact, under the ordinary rule, would have been fatal to this claim, but that the ordinary rule does not apply to such property as these cables, which are of an international character. But it seems difficult to concede such international character to these cables which were under the absolute control and authority of a particular state. If they afforded communication between different countries and nations and, in that sense, were international, they were not more international than a packet boat or any other ship trading between various countries.

According to the terms of the concessions, these cables possessed the character of Spanish works of public utility, and if, as private ordinary property, they were subject to destruction without compensation in case of necessity of war, *a fortiori* they were so as an enemy public utility undertaking.

As to the contention that, having regard to the terms of Article 7 of the special agreement providing for the settlement of these claims, this Tribunal is to decide "in accordance with treaty rights and with the principles of international law and of equity," compensation in this case should be paid on the ground of equity, the following observations may be made.

If the strict application of a treaty or of a specific rule of international law conduct to a decision which, however justified from a strictly legal point of view, will result in hardship, unjustified having regard to the special circumstances of the case, then it is the duty of this Tribunal to do their best to avoid such a result, so far as it may be possible, by recommending for instance some course of action by way of grace on the part of the respondent government.

In this case it is to be observed that the Eastern Extension Company was well aware of its own risk in Spanish territory. As has been shown, their concessions expressly provided for it. The various advantages, privileges, exemptions and subsidies, accorded them by the Spanish Government, form the consideration in exchange for which the company assumed the risk of being treated in time of war as a Spanish public service with all the consequences which that position implied.

In the opinion of this Tribunal, there is no ground of equity, upon which the United States should be adjudged to pay compensation for the materialization of this risk in the form of an act of war the legitimacy of which is admitted.

The British Government contend that, as a matter of right, the Eastern Extension Company is entitled to receive compensation because some other foreign cable company, viz., *La Compagnie française des Câbles télégraphiques*, working cables between the United States of America, Haiti and Cuba, received from the United States Government compensation for the cutting of

its cables. It is urged that, when acts of war by a belligerent have resulted in personal injury to individuals in certain territory or in damage to their property in that territory, if the government of that territory pays the claims of the nationals of one country, it must also pay the claims of the nationals of other countries without discrimination (Oral Argument, pp. 261 and 262); and further, as the argument would seem to imply (Oral Argument, p. 264), that, if it be established that a government has paid compensation to its own citizens, then it is bound to pay compensation to foreigners whose person or property was damaged; and authority is said to be found for the last proposition in cases arising out of the Mexican insurrection.

Whether viewed as a general principle, or in its particular application to the facts of this claim, such a proposition appears to us to be impossible of acceptance. It is perfectly legitimate for a government, in the absence of any special agreement to the contrary, to afford to subjects of any particular government treatment which is refused to the subjects of other governments, or to reserve to its own subjects treatment which is not afforded to foreigners. Some political motive, some service rendered, some traditional bond of friendship, some reciprocal treatment in the past or in the present, may furnish the ground for discrimination. We do not know that the provisions of the French or Belgian law, reserving to their own nationals a right to reparation for war losses, gave rise, or could give rise, to any protest by resident foreigners, any more than could the fact that, by special agreement, the Belgians in France and the French in Belgium have been reciprocally admitted to the same treatment in their respective countries. An instance of such discrimination is furnished by the proclamation of Lord Kitchener of Khartoum, dated May 31, 1902, on the final surrender of the Boer forces. In that instrument it is provided (paragraph 10) that a commission would be appointed for the purpose of assisting the restoration of the people to their homes and helping those who, owing to war losses, were unable to provide for themselves; and that for that purpose a sum of money should be placed at the disposal of the commission. The final clause of that paragraph provides as follows: "No foreigner or rebel will be entitled to the benefits of this clause."

It appears from the documents in this case that the repairs of the French cables in question had been effected with all expedition and at the express request of the United States authorities and for American strategic purposes (Senate Document, No. 16, 58th Congress, 2nd Session, pp. 22 and 23); that, unlike the British cables, the French cables were used by the American naval authorities and had afforded them direct communication with President McKinley (*Ibidem*); and that the French cable company had rendered the United States valuable services during the operations of 1898 (Letters from the French Embassy at Washington, November 15, 1901; November 28, 1902; February 19, 1903; March 12, 1903).

There is no evidence that the Eastern Extension Company can avail itself

of a similar plea. The French case is a good example of the payment of compensation, on grounds of equity and comity, which did not exist in the British case.

From these considerations it does not appear that the contention of the British Government on this point is in any way justified.

As to the contention of the British Government that, in the absence of any rule governing the matter of cable cutting, it is the duty of this Tribunal to frame a new rule, we desire to say:

First, the duty of this Tribunal, in our opinion, under Article 7 of the special agreement, is not to lay down new rules. Such rules could not have retroactive effect, nor could they be considered as being anything more than a personal expression of opinion by members of a particular Tribunal, deriving its authority from only two governments;

Secondly, in any case this Tribunal, as has been already stated, is of opinion that the principles of international law, applicable to maritime warfare, existing in 1898, are sufficient to enable us to decide this case.

NOW THEREFORE:

The Tribunal decides that the claim of His Britannic Majesty's Government be disallowed.

Dated at London, November 9, 1923.

The President of the Tribunal,
HENRI FROMAGEOT.

CASE OF THE CUBA SUBMARINE TELEGRAPH COMPANY, LIMITED
(CLAIM No. 27)

Award rendered at London, November 9, 1923

The contentions and applicable principles in this case are practically the same as in the claim of the Eastern Extension, Australasia and China Telegraph Co., except that in this case the company's enterprise as a Spanish public service having a military and strategic interest is more clearly apparent. The right of the United States to take measures of admittedly legitimate defense against these means of enemy communication was fully justified.

Not only is there no ground of equity upon which an award should be made against the United States, but equity appears to be on the side of the United States in their refusal to pay the damages claimed.

This is a claim presented by His Britannic Majesty's Government on behalf of the Cuba Submarine Telegraph Company Limited, a British corporation, for a sum of £8,174 17s. 9d., being the amount which this company had to expend upon the restoration of the submarine cables, connecting various places on the island of Cuba, which had been cut by the United States naval authorities during the Spanish-American War of 1898.

The facts are as follows:

Under concessions granted by the Spanish Government and respectively dated December 31, 1869, and September 29/30, 1895, the Cuba Submarine

Telegraph Company was operating in 1898 certain submarine telegraph cables connecting Habana, Santiago de Cuba, Cienfuegos, Manzanillo and various other places in the island of Cuba.

In April, 1898, war broke out between the United States and Spain. At the very beginning of the war a proclamation of the President of the United States, dated April 22, 1898, declared a blockade of the north coast of Cuba, including all ports on that coast between Cardenas and Bahia Honda and the port of Cienfuegos on the south coast of Cuba. That blockade was maintained from that time by the United States naval forces.

On May 11, 1898, by command of the United States superior naval officer, the cables on the eastern side of Colorado Point at the entrance to Cienfuegos Harbor were cut and the cable house on land was destroyed by the American naval forces under heavy fire and in circumstances of considerable difficulty. All communication by ocean cable with Cienfuegos was thus interrupted. On July 11, 1898, the cable connecting Santa Cruz del Sur, Trinidad, Cienfuegos and Habana with the stronghold of Manzanillo on the east of Cuba was similarly cut in the San Juan Channel; this cutting not only prevented telegraphic communication between the above-mentioned points, but, according to the report addressed to the American commanding officer, was to have the great moral effect of checking the inland traffic with Manzanillo and certainly to prevent the calling of reinforcements then in the west to resist the ultimate American attack and the capture of Manzanillo. It may be observed that all these cuttings took place inside enemy territorial waters.

These facts are not contested; nor, from the point of view of the successful conduct of operations by the United States naval and military forces in Cuba, is the importance of interrupting the telegraphic communications between enemy ports denied.

As in the case of the Eastern Extension, Australasia and China Telegraph Company, the question is whether or not the United States Government is bound to pay as damages to the Cuba Company the cost of repairing the said cables and appurtenances.

The contentions of the British Government and of the United States Government are practically the same in both cases, and it would be superfluous to repeat all that has been said in this Tribunal's decision relating to the Eastern Extension Company's claim as to the application of international law, equity, the treatment afforded by the United States Government to the French cable company and the alleged duty of this Tribunal to frame some new rule of international law on this subject. It seems to be sufficient to refer to that decision.

Some particular remarks may, however, be made.

In this case the character of the company's enterprise as a Spanish public service having a military and strategic interest is more clearly apparent. The transmission of the official correspondence of the Spanish Government was obligatory and gratuitous, the managers and directors being appointed

by that government (Schedule of 1869, Articles 4 and 11); inspection of any kind of the contents of the official communications was prohibited; Spanish authorities had the right to inspect every description of correspondence and to refuse to allow the forwarding of despatches prejudicial to the security of the state; all ciphers or secret keys were excluded from all private correspondence (Article 12 *ibidem*); but, going further still, the service and preservation of the line within the Spanish dominions were reserved to the Spanish authorities and when, in 1895, some new cables were conceded to the Cuba Company, it was expressly explained in the report presented on September 27, 1895, to Her Majesty the Queen Regent of Spain by the Spanish Minister of Colonies, that the cables were to be laid in order to remove some military difficulties presented by the existing land lines and specified by the Spanish military superior authorities. It was, therefore, according to that report, "indispensable to meet this necessity by replacing the land telegraph lines by submarine cables, which will permit the maintenance at all times of connection and communication between the strategic points of the island;" and among them, those situated on the south coast between Cienfuegos and Santiago de Cuba were mentioned as being not of less need and importance.

In these circumstances the right of the United States to take measures of admittedly legitimate defence against these means of enemy communication was fully justified; if some compensation was due to the company for the damage done to the cable, it was for the Spanish Government to make it, always supposing that such compensation had not been already considered in the terms agreed upon under the concessions. In our opinion, not only is there no ground of equity upon which an award should be made against the United States, but equity appears to us to be on the side of the United States in their refusal to pay the damages claimed.

NOW THEREFORE:

The Tribunal decides that the claim be disallowed.

Dated at London, November 9, 1923.

The President of the Tribunal,
HENRI FROMAGEOT.

BOOK REVIEWS AND NOTES*

The Genesis of the War. By the Right Honorable Herbert Henry Asquith. New York: George H. Doran Company, 1923. pp. ix, 405. \$6.00

This book may justly be considered as England's authoritative statement of her case regarding the origin of the World War. Mr. Asquith is the one Englishman who, in the critical years preceding its outbreak, had opportunity for the widest information and bore the heaviest burden of responsibility relating to this subject. He has stated the case coolly and clearly, and with the skill of a trained parliamentarian.

In order to present a background on which to lay in the lines and colors of his picture, Mr. Asquith takes the reader back to the year 1888. In the period 1900-1903, covering the chancellorship of von Bülow, he pre-occupies himself chiefly with the behavior of Germany, with very little attention to the conduct either of England or other Powers. It is a skillful preparation for a criminal indictment, with such index-fingers pointing toward it as these quotations:

The Kaiser's remark to a Cabinet colleague of Lord Salisbury—"Lord Salisbury is antiquated. He is possessed by the idea that there is a balance of power in Europe. There is no balance of power in Europe, except *Me*—me and my 25 corps"; and Prince von Bülow's dictum regarding the basis of imperial policy—"In the new century, Germany must be the hammer or the anvil."

Prince Bülow's myth of "Encirclement" is very ingeniously run to ground through the exposure of the Emperor's own absurd account of its origin in the secret treaty alleged to have been made in 1897 between America, England and France. *Ex uno, disce omnes*, is the inference from this preposterous pretense put forward in the Kaiser's *Memoirs*, and here elaborately refuted by solemn denials from the Foreign Offices of three nations,—an array of testimony which suggests the employment of a trip-hammer to kill a mosquito. Quite as conclusively Mr. Asquith contends that the German exploitation of Turkey (so happily referred to by Bülow as the "Wooing of Islam"), the fomenting of differences in the Balkans, the close friendship of the Emperor with the two German-Austrian Kings of Rumania and Bulgaria, thus opening for Germany a "corridor" for trade and influence in the East,—in short, the whole unresisted procedure of *Weltpolitik*,—prove that, if there ever was a policy of "Encirclement," it had proved to be a complete failure before Prince Bülow left office in 1909.

Having thus dismissed the fiction of "Encirclement" as a mere halluci-

* The JOURNAL assumes no responsibility for the views expressed in signed or unsigned book reviews or notes.

nation, Mr. Asquith proceeds to explain the real nature of the Triple Entente. In April, 1904, "the last causes of friction" between Great Britain and France were removed by mutual concessions regarding the interests of the two nations in Morocco and Egypt. This agreement is claimed to have been purely a work of reconciliation and peaceful adjustment of long standing difficulties between these two Powers, involving no intention to isolate Germany. How little formidable it was as a menace to German interests is shown by the fact that Delcassé, who had signed the agreement for France, was soon afterward dismissed from office as an assurance of good will toward Germany; and Prince Bülow declared in the Reichstag, that, "from the point of view of German interests, we have nothing to object to in regard to it." The Anglo-Russian convention of August, 1907, is held to have been a similar act of reconciliation between the signatory Powers, having no relation to the isolation of Germany. It terminated the Russian menace to India, and thus dissipated a war-cloud that had for generations haunted the minds of British statesmen and diplomatists.

As to the further development of the Entente, Mr. Asquith cites the explicit admission of Prince Bülow, "It was not till the outbreak of War that the Triple Entente became a solid coalition." That there was no alliance against Germany is conclusively shown by the letter of President Poincaré, of July 31, 1914, addressed to King George V, urging the intervention of Great Britain in case a conflict were forced by Germany and Austria. The actual status of the Entente at that critical moment is thus stated by the President of France in asking for British intervention:

Undoubtedly our military and naval engagements leave Your Majesty's Government entirely free, and in the letters exchanged in 1912 between Sir E. Grey and M. Paul Cambon, Great Britain and France are merely pledged the one to the other to conversations in the event of European tension, with a view to considering whether there is ground for common action.

That the military and naval experts of the two Powers had compared notes and considered beforehand "the possibilities which might arise in the event of a breach of the peace," is frankly stated, and the text of the formula agreed upon in 1912 is given. In case of unprovoked attack by a third Power, either government should immediately discuss with the other whether both governments should act together

to prevent aggression and to preserve peace, and if so, what measures they would be prepared to take in common. If these measures involved action, the plans of the General Staffs would at once be taken into consideration, and the Governments would then decide what effect should be given to them.

Was there reason for this understanding? "The larger purposes of the Hague Conferences—disarmament in particular"—writes the Prime Minister, "were frustrated by divided counsels and the veto of Germany. The

situation was full of menacing possibilities from the piling up of armaments." Germany's new and persistent naval ambitions could have but one explanation for the English Government. British supremacy on the sea was clearly threatened. "We prepared," says Mr. Asquith, "by the reconstruction of our army and large additions to our navy, for the worst eventualities."

No one can doubt, after reading this account of the *Genesis of the War*, that in 1914 Great Britain was as fully prepared as her resources permitted for the "worst eventualities." It would be a confession of weakness on the part of Mr. Asquith's Government to conceal this fact, and there is no concealment. On the other hand, there appears to be no exaggeration. The chapters on "Pre-War Preparations" are among the most informing in the book.

Naturally, much attention is given to the "Naval Expansion of Germany." As early as 1897, in a speech made at Koln, on April 4, the Kaiser had declared: "Neptune with the trident is a symbol that we have new tasks to perform . . . and that trident must be in our hands." The growth of the German navy is followed in much detail. The Morocco incidents, the Haldane mission, and other episodes with which the public is familiar are fully discussed; but what lends to them a new interest is the incidental illumination of British policy, not only that of the Asquith ministry, but the necessarily permanent policy of the British Empire so long as it remains an empire.

The two chapters in this volume most interesting to those who are attentive to contemporary national policies are those devoted respectively to "The Committee of Defense" and "The Dominions in Council." At this point the Prime Minister invites us to sit briefly with the Cabinet and listen to its deliberations.

It will be a surprise to many to learn with what meticulous care British statesmanship studies every situation affecting the possibilities of war. For this purpose the ablest and most experienced experts are employed. In August, 1909, says Mr. Asquith, "it would not be an unjust claim to say that the Government had by that date investigated the whole of the ground covered by a possible war with Germany:—the naval position; the possibilities of blockade; the invasion problem; the Continental problem; the Egyptian problem." It is impossible here to enumerate all the activities involved in this form of preparation. "I am not sure," he writes, "that the compilation of the War Book was not the most important step of all. Into the War Book, which was started in 1910, we incorporated all the predetermined action, decided upon as the result of the innumerable inquiries, in the contingency of war." This War Book was carefully kept up to date. Draft Orders in Council everywhere accompanied the King on his travels in time of peace and were kept set up in type, "so that on a sudden outbreak of war they could be circulated and put into operation at a moment's notice."

In 1909 the representatives of the Dominions were invited to sit with the Committee of Imperial Defense. It was the beginning of a new order of things in the empire. In May, 1911, Sir Edward Grey, in the presence of these representatives, stressed the necessity of a common foreign policy for the whole empire. In his discourse on that subject Sir Edward said: "What really determines the foreign policy of this country is the question of sea power. It is the naval question which underlies the whole of our foreign policy, and more than our foreign policy." And this statement was reinforced by the assertion that "the creation of separate fleets has made it essential that the foreign policy of the Empire should be a common policy. If it is to be a common policy," he continued, "it is obviously one on which the Dominions must be taken into consultation, which they must know, which they must understand, and which they must approve." The "common policy" for the preservation of the empire was pointed out to be, to prevent the domination in Europe of some Power, or group of Powers, "which could eventually take the command of the sea from us." And Mr. McKenna defined what was meant by "command of the sea" as follows: "By command of the sea we understand keeping the sea open to ourselves at every point, and closing it to the enemy." And he adds: "The destruction of overseas trade in almost any modern state would be so serious as I believe to constitute something more than a crippling blow. On the outbreak of war our problem, which will be one and the same all the world over, would be to seek out, to bring to battle, or to mask the enemy fleet and enemy cruisers wherever they might be found."

Mr. Asquith does not preoccupy himself with any consideration of the question why Great Britain alone should be permitted to possess and exercise this indefeasible right to control the seas "all the world over." His exposition makes it very plain that until this right was challenged Great Britain's policy was one of peace. For Serbia or for Russia Great Britain would not have fought Austria or Germany, whatever their insolence or outrages might have been. But when Belgium and the Channel ports were involved, Great Britain's course was determined by the necessity of her secular policy.

The chapter on "Grey's Efforts for Peace" confirms this conclusion. No impartial critic can doubt the sincerity of those efforts. Great Britain did not want war, not even with Russia and France in the front line of battle, and Sir Edward Grey did everything in his power to avert it. Germany did nothing for peace except to advise Austria to be firm and to make Russia appear responsible for the conflagration that was foreseen, while she herself threatened Russia and made ignominious proposals for the neutrality of France. Of Great Britain Germany demanded nothing in the interest of peace. What she desired and for a time expected was the privilege of fighting France without British intervention.

DAVID JAYNE HILL.

Die Lehre von den Völkerrechtlichen Vertragsurkunden. By Ludwig Bittner. Deutsche Verlags-Anstalt, Stuttgart, 1924. pp. xiv, 314.

This book seems to the reviewer an example of ultra-Teutonic scholarship. Though dealing with an intensely practical subject, it would probably read to a man of affairs about like a doctor's thesis on the Greek particle *ἀν*. The effort expended in attempting to bring isolated forms and instances (some very unimportant ones) of diplomatic negotiation and international agreements into type groups and subject them to general norms is indeed tremendous. The footnotes alone give evidence of the twenty years of detail research which Professor Bittner has given to the documentation of his generalizations. It is just to the author to say that his generalizations and classifications are properly qualified with such words as "meist" or "oft", "mitunter," "eben so oft," "vielfach, wenigstens äusserlich," "doch kommt es auch vor," and the like. Indeed, after considerable generalization, he sometimes closes a section, as on page 113: "The contents of these notes cannot be brought within a definite classification (Schema). Most often it is the initiatory note (Antragsnote) that is substantively important, whereas the invitation and summons notes are useful in the preliminary technical preparations for the Conference, but this is not always necessarily so."

What is the value of such a generalization, for example, as this on pages 58-59:

We will find the parties to these Ministerial documents (Urkunden) sometimes called heads of state and sometimes governments. Numerically the documents employing the term government are 90% and those designating the head of the state are 10% of the total. There is no apparent substantive or political basis for this difference in designation. Documents relating to the same subject sometimes use the term government and sometimes designate the head of the state. We may observe this in treaties relating to, . . .

duly supported by ample footnotes?

In view of modern tendencies and diplomatic practice since the Congress of Vienna, which is precisely the period this book aims to cover, it seems to the reviewer that any attempt at this late day to reduce the multiform methods of international negotiation to types and norms, will probably be regarded as barren scholasticism.

The almost total absence of any reference to English or American sources and the predominant Austro-Hungarian documentation (the author was for many years the archivist of that government) further restricts the practical value and perhaps also the authority of the book. An index would have made more accessible many of the interesting references to diplomatic incidents mentioned in the footnotes.

Comparisons are odious; still we venture to suggest that persons interested may contrast this book with Satow's *Guide to Diplomatic Practice*.

GEORGE C. BUTTE.

De Dominio Maris Dissertatio. By Cornelius van Bynkershoek. A Photographic Reproduction of the Second Edition (1744), with an English Translation by Ralph Van Deman Magoffin and an Introduction by James Brown Scott. (The Classics of International Law, No. 11.) New York: Oxford University Press, 1923. pp. 108+80. \$2.00.

On August 30, 1923, the Supreme Court of the United States rendered a decision fixing three miles as the limit for executing the provisions of the Volstead Act.¹ It was not long, however, before the authorities recognized that this distance was insufficient for the effective enforcement of the Eighteenth Amendment to the Constitution. Then began that series of negotiations with foreign nations which culminated in treaty arrangements² for a limit of one hour's steaming from shore or approximately twelve miles. This limit was acknowledged only for the prevention of smuggling of intoxicating liquors. Otherwise, the high contracting parties have the "firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters."³

The fundamental principal herein involved and the basis for its present extension was given nearly two centuries and a quarter ago by the Dutch jurist, Cornelius van Bynkershoek, in the little tractate which is here reprinted by the Carnegie Endowment for International Peace. In a brief but illuminating introduction, Dr. James Brown Scott says that Bynkershoek's thesis is twofold:

First, that the ocean, or high sea, beyond cannon-shot from the shore, is subject to occupation and therefore ownership, although, in fact, it has not been occupied and has not therefore been brought under ownership; second, that a state can take possession of the waters washing its shores and hold such adversely against the world, as far as it can control and make that possession effective by cannon from its shores—that therefore, to the extent of the cannon-shot from shore, marginal waters are subject to possession, occupation and, therefore, ownership. In the days of Bynkershoek, a cannon carried approximately three miles; hence the statement that a nation may occupy and exercise ownership over waters within three miles of low-water mark. This was the solution proposed by the young publicist; this was the solution accepted by the nations; this is the solution still obtaining; unless modified by expressed consent.

¹ New York Times, May 1, 1923, p. 1.

² Treaties ratified with Great Britain (U. S. Treaty Series, No. 685); with Denmark (U. S. Treaty Series, No. 693); and with Norway (U. S. Treaty Series, No. 689). Treaties signed, but not ratified at the date this was written, with France, Germany, Italy, Netherlands, Panama and Sweden. A test case involving the interpretation of the treaty with Great Britain seems to be in prospect from an information filed in New York City on Sept. 29, 1924, against the master and crew of the 30-foot motor boat K-14622, the point at issue being the speed of the motor boat, about 30 miles, over twice as much as the 12 miles generally recognized as one hour's steaming.

³ U. S. Treaty Series, No. 685; Supplement to this JOURNAL, Vol. 18 (1924), p. 128.

Bynkershoek himself in his solution of the question suggests the possibility of some modification of this limit, when he says:

I am speaking, however, of our own times, in which we use those engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men's weapons ends, for it is this, as we have said, that guarantees possession.

It is a tribute to the author's soundness of thought that the principle laid down by him has exercised its influence on the law of nations to this very day.⁴

The photographic reproduction of the original Latin text presents an excellent appearance and Professor Magoffin's scholarly translation puts the tractate at the ready disposal of the man of affairs. If the General Editor of the series needed any justification for his vision in republishing the classic works of international law, the timeliness of the volume before us should give him ample satisfaction.

HERBERT F. WRIGHT.

Leading Cases on International Law. By Pitt Cobbett. 4th ed. Vol. II. War and Neutrality. Edited by Hugh H. L. Bellot. London: Sweet and Maxwell, 1924. pp. xxxviii, 690. 25 shillings net.

The volume on Peace appeared in 1922. The present volume, like its predecessor, presents international incidents in brief form, appends to each a short commentary, and, besides, inserts about forty compact treatises dealing with pertinent topics.

Naturally enough, considering the present state of the world and of international law, the volume on War and Neutrality is almost twice as large as the volume on Peace, and states almost twice as many international incidents. In the volume on Peace the incidents numbered fifty-eight. In the present volume, they number one hundred and ten. Of the one hundred and ten, seventy-six are cases litigated in ordinary courts—sixty-one in English courts, twelve in American courts, and three in Japanese courts. In the cases litigated in England and Japan, there are at least five of special importance to Americans. Besides, the United States was interested in thirteen of the thirty-four incidents that did not go to ordinary courts.

Obviously, the volume contains much that an American may read with peculiar profit. No one but a specialist can be expected to read the whole of it; and even the parts of special value to Americans cover so many pages that it seems advisable to point out that there are a few passages which the

⁴ Pitman B. Potter, *The Freedom of the Seas in History, Law and Politics* (N. Y., 1924), p. 91. Cf. also Henry G. Crocker (ed.), *The Extent of the Marginal Sea: A Collection of Official Documents and Views of Representative Publicists* (Washington, 1919).

American interested even slightly in international affairs cannot afford to ignore. The irreducible minimum of reading includes the enemy character of corporations (pp. 31-37), enemy persons and property found within the territory of a belligerent (pp. 62-82), the nature and functions of prize courts (pp. 279-299), the Geneva Arbitration (pp. 451-477), national neutrality laws (pp. 500-512), and the doctrine of continuous voyage (pp. 613-640).

Has this volume been published too soon after the World War?

There is something to be said on each side of that question.

On the one hand, it seems clear that the editor has found it possible to restrain expression of emotion. There is little if any use of abusive epithet. The German invasion of Belgium, for example, is stated with scientific exactness (p. 443); and the most sensitive German will probably express no criticism beyond a wish that the English seizure of the Danish fleet in 1807 might have been mentioned, and might then have been distinguished on some such ground as a hundred years of difference in international theory.

On the other hand, as the preface points out, the nearness of the World War has caused some perplexity as to the mode of dealing with the Declaration of London and certain British Retaliatory Orders in Council. The Declaration of London, framed by the Naval Conference of 1909, attempted to lay down the laws of naval war; but some of the laws stated were subjects of dispute, and, as the Declaration of London was a compromise between opposing views on several subjects, there was an express agreement that "the provisions of the present Declaration must be treated as a whole and cannot be separated" (Art. 65). No country has ratified the Declaration of London as yet. By Order in Council, Great Britain on August 20, 1914, announced that the Declaration of London, not as a whole, but subject to "additions and modifications," should be put in force "as if the same had been ratified." France and Russia did likewise. The United States protested on October 22, 1914. Later Orders in Council introduced still other "additions and modifications," "rendered necessary by the special conditions of the present war." Finally, by Order in Council, on July 7, 1916, all those Orders in Council were withdrawn, and it was declared "that it is and always has been" the intention to exercise "belligerent rights at sea in strict accordance with the law of nations." The documents may be found in *Diplomatic Correspondence between the United States and Belligerent Governments relating to Neutral Rights and Commerce (Special Supplements to the American Journal of International Law, Vols. 9 and 10)*. That ultimate Order in Council came none too soon; for on April 7, 1916, the decision of the Judicial Committee of the Privy Council, in *The Zamora*, had shown that Orders in Council cannot change international law. So it happens that proceedings under the Orders in Council as to the Declaration of London, whether those proceedings were judicial or otherwise, are of doubtful value, even in Great Britain. Possibly, much the same may be

said of the Retaliatory Orders in Council. The World War is so recent that such points have not yet taken their permanent place in scientific discussion.

Bearing all this in mind, the judicious reader will probably conclude that, as the editor has good temper and has tried to cover the ground with accuracy, this embarrassing piece of work has not been performed prematurely; and, at any rate, it is useful both in form and in substance.

EUGENE WAMBAUGH.

International Law. By Prof. Charles G. Fenwick. New York: The Century Company, 1924. pp. xxxvii, 641, including appendices and index. \$4.00.

In this volume Prof. Fenwick has pursued a convenient method of arrangement, discussing in successive order and with appropriate subdivisions the science of international law—its historical background, nature and scope, development, determination of content, and relation to municipal law; persons of international law—membership and acquisition in the family of nations, continuity and loss; substantive international law—rights and equality of international persons, rights of existence and independence and jurisdiction over persons and vessels, extradition of criminals and jurisdiction over territory and of air above national territory, the high seas, external independence and treaties, agents of international intercourse, remedial rights and responsibility of international persons; international procedure for the protection of rights—peaceable and forcible falling short of war and by war, war's effect upon normal relations of belligerent states, and law of land and maritime warfare, relation of neutral states to belligerents, with neutral rights, conflict of rights as to blockade and contraband, neutral duties, aerial warfare and termination of war. Appendices include the Covenant of the League of Nations, Statute of the Permanent Court of International Justice, and Select References.

With some apparent misgivings, especially shown by the fact that he attaches an entirely secondary importance to the so-called laws of war, Prof. Fenwick treats of international law as if today it approached the dignity of a science. Yet one must rise from the reading of his book with the conclusion that at this time it is but an empirical art, the materials and application of its instances still to be worked out upon some basis only dimly perceived. To its development as a science the writers of this JOURNAL are devoted, and to this end the work of Prof. Fenwick of course contributes. Perhaps under the circumstances, and bearing in mind its purposes, nothing more was to be expected than the book gives, for in the preface the author says amendments of the law are beyond "the scope of the present volume. Its implications are, indeed, suggested here and there when glaring defects are under consideration; but beyond this it has been neither feasible nor desirable to make constructive proposals. Reforms will be more rapidly forthcoming once the

knowledge of present conditions has become more general." A distressed world has brought home to the most stupid, knowledge of the fact that the international law of the day has egregiously failed. How mere dress rehearsals of the facts are going to accomplish much is not obvious to this reviewer. The world at large and the college classroom as well will demand more filling pabulum.

Bowing courteously to the set opinions of the leaders of the past and their equally blind followers of today, Prof. Fenwick does not condemn but tentatively accepts the validity and legality of war as an instrumentality. Euphemistically he calls it a means of "self-help" or a means of obtaining a "redress of grievances," and "legal" or "lawful." This reviewer would deny that it is any of these things, but, it may be within the lines of future thought, would urge that war is merely a fact in the world of today, and in its way as much a violation of law as perhaps are all of our physical ills, except old age. If the author had said that the nations think it a means of self-help, or, in other words, of profiting at the expense of weaker nations, or that under false pretenses nations use it to relieve their complaints, mostly imaginary, just as savages resort to self mutilations, he would have been nearer right.

Yet he takes this course with a realization that war often, if not generally in these modern times, has been nothing more than a selfish struggle for material advantage for the benefit of a small circle among the contending nations. On page 306 he refers correctly to colonial expansion and markets as the concern of "only a small part of the citizen body of the particular state," although the chief objective of foreign offices. These things mean war, but what have they to do with real "self-help" or "redress of grievances" so far as the great body of the nation is concerned, or with "law" or "legality"? Are we to call the *practices* of nations when they revert to the ways of the jungle by the resounding name of *law*? Must we ever tap Mars gently on the wrist and ask him to moderate—not suppress—his rages?

What is the purpose of law? Within the state among its greatest purposes are the securing of peace and equality of advantage to all citizens. This fact, so clear to us within the nation, is practically never made a touchstone when law is defined internationally with relation to the objects of its supposed service. Instead of following somewhat blindly elder definitions of international law, had we not better say that the purpose of true international law is at the present time to secure peace between states as nations have endeavored to maintain it at home, and then add that, in so far as war exists between nations at all, it demonstrates the failure of international law? Until this position is recognized, we may expect, as is the fact, treatises said to be upon international law to be little more than compendiums of facts bearing little relation to law of any fundamental importance. Such works, when valuable today, are scarcely more than guides to the art of politeness and ways of ordinary business among nations—useful, but only in a minor way enlightening, and without the breath of sentient life. They may not

inspire enthusiasm. No work that palliates or justifies war can in deep earnestness and in this particular be called a work on international law, if the purpose of such law is to preserve peace among nations. Authors can not go far till they address themselves to this deeper question of international well-being. It may be that in taking the newer position just outlined they will be right in discarding the old ideas of natural law and of any active Providential interference in particular events at any rate. But we cannot disregard the principle of utilitarianism. We must learn from the consequences of acts the fundamental principle of right and wrong—that is to say, law—among nations. The mass psychology of peoples has to be studied for its bearings and rules affecting our problem. Unfortunately, all these things are steadily ignored for the innutritious rehearsal of events, the substantial reasons behind the events being rarely traced out, but the pretenses advanced usually accepted.

However, we must take books as we find them and for what they are, even though the authors seem in our opinion to have missed their larger opportunities.

This work has been most carefully done, and will fill the place designed with both teacher and student, as well as with the general reader. Let us hope, however, that on a future occasion Prof. Fenwick will devote his knowledge of materials to a wider and, if you please, a more idealistic—which would at the same time be a more really practical—treatment of the subject, leaving behind the traditions of the past.

JACKSON H. RALSTON.

Memoirs of My Life. By Giovanni Giolitti. Translated by Edward Storer and prefaced by a study of the personality and career of Giolitti by O. Malagodi. London: Chapman and Dodd, Ltd., 1923. pp. ix, 472. 30 shillings.

Signor Giolitti's career and achievements as a public official have given him a unique place among the great statesmen of modern times. And his *Memoirs*, touching intimately as they do on so many vital developments not only in the national life of Italy, but also in the international affairs of Europe, form one of the most important contributions on the political and diplomatic history of recent times. No one who wishes to understand the fundamental principles of successful national administration, or how to conceive and execute a broad-minded foreign policy, can afford to miss this volume. And an intimate acquaintance with its pages is essential to a clear understanding of the recent political and social development of Italy, and of such international episodes as the Libyan War, the Trieste and Fiume disputes and the Austro-Italian controversies over Balkan problems.

The Giolitti *Memoirs* cover the long period from his birth in 1842 and his youthful days at San Damiano in the Val di Macra, a valley of the Eastern

or Maritime Alps, down to end of his fifth ministry in 1921. The first three chapters are concerned with a short account of his education and his political novitiate in the Ministries of Justice and Finance, as Deputy, and as Minister of the Treasury under Crispi. The next three chapters are devoted to a detailed account of his first premiership, the internal political squabbles and developments from 1892 to 1898, the Banco Romano and the "Plico Segreto" scandals, the unfortunate dictatorial régime of Crispi, and the Abyssinian War. Four chapters then follow, describing at length how a liberal government was evolved during his two ministries that covered most of the period from 1903 to 1908, the finances of the state reorganized, economic conditions greatly improved, and many remarkable reforms put through—such as universal suffrage, reorganization of taxes and conversion of the public debt, and nationalization of the railways.

Chapters XI to XIV deal intimately with the Libyan War from its inception in his own brain to the conclusion of peace with Turkey, including a detailed account of the prolonged negotiations at Lausanne and Caux which preceded the eight days' ultimatum to the Porte and the end of the conflict. Chapter XV is a most interesting and illuminating portrayal, with documentary material, of the secret "conversations" between Austria and Italy concerning Balkan problems and the story of how Austria tried deliberately on two occasions to draw or force Italy into military aggression over Serbian and Albanian difficulties. The ensuing chapter, entitled "Italy's Neutrality and Her Entry into the War," is an explanation of Giolitti's "neutrality policy" for Italy, which he advocated consistently and, with sincerity in 1914, because of his convictions concerning the long duration of the conflict then starting, and the difficulties and sacrifices that Italy would be called upon to face if she entered the war. Yet there is little of value for the historian in this chapter, since Signor Giolitti was not in office during the period of the war, or even in intimate touch with the government or the conduct of diplomatic affairs.

The last two chapters contain a summary of the deplorable situation—internal and international—in which Italy found herself at the close of the war, of his adjustment of the Fiume dispute and the Vallona or Albanian problem in his fifth ministry, and of his reform plan to adjust the internal troubles that had caused an industrial, financial and social crisis. Opposition to his measures unfortunately developed rapidly in the Chamber of Deputies; and he resigned promptly, realizing the futility of attempting drastic reforms without the genuine support of a large parliamentary majority. Yet the reorganization which he contemplated was ultimately achieved, amid the plaudits of all Italy and of the world, by another of Italy's illustrious sons: Mussolini.

Signor Giolitti writes in a straight-forward pungent style, without rhetorical flourishes. He indulges in no diatribes against the persons or policies of his opponents or political contemporaries. He is not a champion

of any cause—political, economic, social or moral. Nor does he set forth claims to political genius or brilliancy. He tells his story simply, yet with a sincerity and earnestness that bears conviction; while his narrative is genuine and true to the facts as Giolitti knows them, or as the documents in his possession bear witness. His judgment of men is so excellent, and his characterization of the leading personalities of his time so accurate, that one regrets to find so small a portion of this work devoted to the social and personal side of his public life.

It is, indeed, refreshing to find a book of reminiscences dealing trenchantly with men and affairs through a period of fifty years, so free from personal bias and egotism. And there is no other single volume that demonstrates so clearly and so strikingly, yet without pride, how easy it is for one who serves his country intelligently and unselfishly with a determination to safeguard the national interests and to promote the welfare and happiness of the people at all costs, to rise to great heights in the field of political activity. The great interest that dictated the policy of Giolitti throughout his long political career was "country"; and, if ever a column is raised to those statesmen who served their country with superlative unselfishness and singleness of purpose, it will bear the names of Lincoln, Harding and Giolitti.

In the field of international politics, Giolitti has set an example which the diplomats of all nations will do well to emulate. No better principles were ever conceived as the basis for a foreign policy than those he laid down for Italy. These were: that her policy should be essentially pacific, and that it should preserve good relations with her neighbors. In his mind, to avoid a general war was more important than punishing a recalcitrant small state, or resorting to military demonstrations to secure a legitimate solution of international difficulties or problems. In the course of the Montenegro episode of 1913, he wired San Giuliano, Italian Minister of Foreign Affairs, that "the folly and crimes of a little State destined to disappear were far less serious than the danger of provoking an European war through our anxiety to bring it to reason as quickly as possible."

In the complete frankness and simplicity of the means used in the pursuit of his ends, Giolitti demonstrated that intrigue, deception and artifice are no longer, if they ever were, essential to the successful conduct of foreign relations. By keeping the great Powers posted systematically on the disturbing conditions in Tripolitania, and frankly conveying to them Italy's apprehensions and policy, Giolitti paved the way for the successful occupation of Libya by Italy without endangering the peace of Europe. And, in European circles, he showed how it was possible to utilize alliances to ensure international protection and peace and to secure commercial advantages, without resorting in the least to aggression. The Triple Alliance, as he defined it, was a "defensive alliance, which, while it guaranteed us our security, allowed us at the same time to enter into cordial relations with

other powers on a footing of perfect equality." And he insisted that the policy of Italy should conform to this interpretation.

And, finally, Giolitti denounces the folly of undertaking colonial adventures or military expeditions, such as the Abyssinian campaign, "as a means of diverting public opinion." Indeed, it is perfectly clear that no colonial enterprise or far-reaching foreign policy should ever be attempted which is not supported whole-heartedly by both parliament and public opinion, and which is not financially well within the means of the state that plans it. And great care should be taken not only to insure its successful execution without conflict, but also to see to it that the scheme contemplated does not injure materially the rights or interests of other states, or disrupt the good relations existing between countries.

NORMAN DWIGHT HARRIS.

International Law and some Current Illusions and other Essays. By John Bassett Moore. New York: The Macmillan Co., 1924. pp. xviii, 381. \$4.00.

In this volume, or at least in the first essay from which it derives its title, John Bassett Moore endeavors, very successfully it is believed, "to contribute something towards the restoration of that sanity of thinking and legal and historical perspective which the recent so-called World War has so seriously disturbed." In carrying this object into execution, Judge Moore has rendered a service which cannot be overestimated. It cannot be doubted that the still, small voice of reason, resuscitated again under such authoritative auspices, will be heard throughout the world and particularly in the United States, and will shatter many of the illusions and misconceptions which were created during or have followed in the wake of the recent catastrophe.

The other eight essays in the book, to be described more fully hereafter, consist for the most part of papers on different subjects connected with international law, jurisprudence, or public policy, published or read at various places or occasions. In bringing them together here in book form, Judge Moore has placed the student and man of affairs in his debt. The essays are not merely informational or entertaining; in every department of knowledge which they touch, they disclose the master's sure grasp of fundamentals, nurtured in history and a sound, benign philosophy, expressed with serenity, wit and an elevation of style and diction, which may well serve as a model of the finest type of historical and legal writing. If the essays may be characterized as a group, they may be said to be featured by an invocation to the necessity of thinking in terms of fundamental and elementary conceptions, with a comparative perspective. Thus, the simplicity of the thesis, combined with the author's vast experience and a natural gift for clear exposition, make these essays at once most readable

and provocative of thought and therefore highly educational. They are not merely technical discussions for the lawyer and the student of international law, though there is not a professional reader who will not profit from them; but they are literary productions which the intelligent layman and man of affairs will not fail to appreciate.

In the first essay, Judge Moore challenges those publicists who seem to have adopted the view "that the international law of the future is to be found in the infringement of its rules committed under the stress of war." Judge Moore, like Grotius in his time, raises his voice in behalf of law, as it has developed among nations through the centuries, and warns against a mistaken estimation of the legal importance of those violations which mark the heat of conflict. He attacks particularly the recently purveyed conception that the fundamental distinction between combatants and non-combatants has ceased to have validity, and that the tiller of the soil and the producer of foodstuffs is now to be considered a combatant. He deprecates the subversive view that the time-honored distinction between enemy private and public property is no longer regarded as fundamental as formerly and that private property may be confiscated or used for the discharge of a public indebtedness or as a measure of reprisal against public national offenses—a notion which seems to have made a deep and correspondingly ruinous impression upon the minds of those who, in their desire to outlaw war by proclamation and indict and punish the elusive "aggressor," would authorize the confiscation of the private property of citizens of the politically declared pariah, thereby promoting, it is believed, the frequency and devastation of war and the insecurity of the institution of private property, with further demoralization of international law. By the citation of statistics of prior wars, Judge Moore shows that the recent war, however impossible of exaggeration, was neither more widespread nor more destructive, relatively speaking, than a number of earlier wars, *e.g.*, the Thirty Years' War and the wars growing out of the French Revolution and the Napoleonic Wars, and that hence there is little ground for canonizing the violations of international law during the recent war as the mark of an epochal break with the past or with the reasons justifying the rules of law in their historical growth. In this connection, Judge Moore particularly challenges the suggestion that the reason for the distinction between goods absolutely and conditionally contraband has ceased to exist. He points out that the "exceptional" measures adopted by the British Government in 1793 to classify foodstuffs as contraband, closely resembled those of 1915 and 1916 and that the earlier, as Jefferson irrefutably demonstrated, were as illegal as the latter, which indeed were not proclaimed by their designers as lawful, but were sought to be justified as "exceptional." In the course of the discussion, the author points out that the rules of contraband and blockade have not grown out of logic, conferring upon a belligerent the privilege of seizing anything which may be of military use or of importance to his enemy, but are the result of

compromise between two conflicting and irreconcilable claims—that of the belligerent to stop all commerce with his enemy, and that of the neutral to continue freely to trade with the belligerents. Judge Moore's treatment of the fundamental bases and the history underlying the rules of law in this regard, should dissipate many illusions which some commentators upon the recent war have tended to promote.

The second essay on "Contraband of War," a paper read before the American Philosophical Society in 1912, points out certain fundamental conceptions of the institution in question, perhaps the most important of the laws of war. The author shows that the carriage of contraband, punishable by confiscation, cannot be lawful, as is sometimes asserted in a confusion of international and municipal law. The discussion in 1912 of the conflict of interest between belligerent and neutral in the matter of contraband and of the problems to which the somewhat sterile provisions of the Declaration of London in this regard would give rise, shows a prophetic vision. The necessity of definitely limiting the premissible category of contraband, Judge Moore deemed indispensable, otherwise, as events proved, the neutral safeguards that "free ships make free goods," contraband excepted, and that blockades must be effectively maintained, become a snare and a delusion. The history of the belligerent claim that foodstuffs may be declared contraband is examined in a section which affords a useful background for the discussion in the first essay as to the importance of maintaining the age-old category of goods conditionally contraband. Sooner than abandon the classical distinction between absolute and conditional contraband, by making both absolute, it is more likely that the classification of "contraband" itself will be abandoned, as the British Government indeed proposed at the Hague Conference of 1907, with only five countries, including the United States, voting against it. In 1912, Judge Moore suggested, in view of the very unsatisfactory legal position, the advisability of adding to neutral duties the obligation of prohibiting the exportation of arms and munitions, as Brazil and Denmark had done during the Spanish-American War. Judge Moore's strong insistence upon maintaining the American tradition in preserving the rights of neutrals as the greatest good to mankind, must command general approval.

In the third essay, on "International Arbitration," delivered as an address in the spring of 1914 as presiding officer of the Lake Mohonk Conference, Judge Moore, in a survey of existing conditions, remarked upon the deterioration, since 1895, of the institution of arbitration, particularly on the part of the United States, and called prophetic attention to the dangers to peace involved in the European political situation. In the exercise by the Senate of ever greater limitation and control over the process of submitting questions to arbitration, the author saw a step backward. He traces the history of arbitration and pays tribute to the work in this regard of the first and second Hague Conferences. He does not think highly of the

arbitration treaties of the twentieth century which proposed to make arbitration obligatory, with the exception of questions of honor and vital interest, thus depriving the agreement of all practical importance. Judge Moore expresses here the opinion that "perhaps it may be unreasonable to expect that international wars will cease before civil wars end" and "in the one case as in the other the maintainance of continuously peaceful conditions will depend upon the general improvement of political and social relations."

The fourth essay, on "the Permanent Court of International Justice," embodies a historical presentation of the antecedents of the present court, of which the author is a distinguished member, and a description of its personnel, its jurisdiction, its practice and procedure, and the judgments and advisory opinions it has rendered. Fortunately for the life of the court, Lord Finlay and Judge Moore successfully opposed the proposal of certain members of the court to give confidential and unpublished opinions to the Council. The documents appended make the essay one of the best and most authoritative accounts of the work and history of the court.

The fifth essay on the "Rules of Warfare: Aircraft and Radio" contains an account of the international conference of the Commission of Jurists held at The Hague in December, 1922, over which Judge Moore presided, "for the purpose of formulating a code of rules for the regulation of the use of aircraft and radio in time of war," an outgrowth of the Washington Conference on the Limitation of Armament. The proceedings and conclusions of the conference are described, followed by the General Report, not heretofore published in the United States. The Rules and General Report are among the ablest documents of their kind of which the reviewer is aware, for they apparently avoid those ambiguities which often conceal or disguise the inability to reach any agreement and are therefore distinctly harmful. The crucial share of Judge Moore himself, as chairman of the conference, in bringing its trying labors to success, has been attested by Admiral Rodgers, American Naval Adviser at the Conference. The convention now awaits approval at the hands of the participating governments.

The sixth essay, "Law and Organization," a presidential address delivered before the American Political Science Association in 1914, presents a critical comparison of municipal and international law. The author deprecates the futile polemics on the question whether international law is law, because the respective protagonists differ as to their conception of law and its application. He points out that international law differs from municipal law not in its essence or obligation, but in the method of its declaration and administration. The principal defect in the international sphere he finds to reside in the lack of that organization which gives to the administration of law within the state a certain security. But recent events have shown that even a highly integrated organization like the League of Nations cannot produce peace when the prevailing political and social conditions, whether dictated

by treaty or otherwise, leave in the minds of nations a rankling sense of injustice or insecurity. It certainly cannot produce peace when by intention or otherwise some of the nations of the world are excluded from the organization. In a valuable postscript to this chapter, written in 1924, Judge Moore acutely psychoanalyses—if that expression may be pardoned—the pacific adherents of such slogans as “the war to end war,” which of all illusions he calls the vainest, and of “peace through victory,” which would doubtless satisfy the most ardent militarist. Judge Moore has little faith in the notion that preponderant force, though it may end a war, can be relied upon to insure peace. He is skeptical about the use to which “sanctions” would be put, if their devotees had them. Judge Moore presents in their true relations, the assumed antonyms, the balance of power, which tends to crystallize from among all associations of nations, and the concert of nations. The former, which is not distinguishable from a planned preponderance of power, he characterizes as the natural and instinctive, the latter as the artificial. Judge Moore also pricks the illusion that it is always possible to find out who began or is responsible for the outbreak of a conflict.

In the seventh essay, entitled the “Passion for Uniformity,” the author shows the devastation, moral and physical, wrought throughout history by the futile conception that men can or should by force be made to think and act alike. As an appeal for the moral and practical wisdom of tolerance, few more forceful contributions have been made. In this chapter are discussed such subjects as codification, the defects in the legal system of the United States and similar topics, all of which had a marked effect in initiating the reform movement now exemplified by the American Law Institute.

In the eighth essay, “Suggestions for a School of Jurisprudence,” Judge Moore publishes his “Plan” of 1915, then privately printed, for the establishment of courses and the active prosecution of research in “comparative law” and jurisprudence, as a direct means for carrying into effect the proposals for law reform discussed in the previous essay. The fact that his recommendations are gradually receiving approval and acceptance by several of our leading law schools attests Judge Moore’s influence as an educator.

The last essay, entitled “Relativity,” an address recently delivered, represents in a sense a consummation and synthesis of the author’s thesis and philosophy, namely, “that all things are relative and that they are to be considered not as isolated facts but in relation to other facts, past and present.” Were men generally guided by this precept, it would not be so easy to sweep them off their feet by sudden events and biased accounts thereof, appropriately pictured and framed for their delectation and stimulation by those having a purpose in so doing. In the loss of that sense of perspective and proportion which is so necessary to the reasoned consideration of facts, lies a universal danger of mental and moral deterioration. The author draws upon a world of experience to illustrate the conservative and practical importance of his injunction.

One cannot put this volume down without a realization of communion with one of the most trenchant and powerful minds of the day. The versatility, yet profundity, which mark its pages, exemplify the busy and highly useful life and thinking of the scholar, the statesman, the lawyer, the historian, the philosopher, the educator, the humanitarian. Read comprehendingly, it will exert a wide and sound influence and cannot fail to achieve the author's object of helping to restore sanity of thinking and a legal and historical perspective to a shell-shocked world. In the field of international law, this book will take its place as one of the great fundamental and indispensable works.

EDWIN M. BORCHARD.

Traité pratique de Droit international privé. Vol. I. By Antoine Pillet. Paris: Librairie Sirey, 1923. pp. viii, 789. 50 francs.

The book before us is only the first volume of what promises to be a most extensive and comprehensive treatise upon the practical problems of private international law. Professor Pillet's earlier work, published more than twenty years ago, entitled *Principes du droit international privé*, is well known to most students in this field. It dealt mainly with theoretical concepts and with the advantages of a new classification which the author proposed in an attempt to simplify the problems and to bring legal principles closer to the facts of international life. In the present work he presents the jurisprudence of France in systematic form, illustrating as far as possible his earlier ideas by presenting their progressive development in the French decided cases, and by pointing out where the courts have failed to comprehend what the author deems the true principle.

The author follows his threefold division of the subject-matter into (1) the rights of aliens; (2) the conflict of laws; (3) the effect to be given internationally to acquired rights (pp. 5-12). With regard to the first two divisions we are on familiar ground, but with regard to the third, the examples which the author gives are not always convincing. Thus the question as to whether an alien married woman enjoys a lien by operation of law upon the French property of her husband is decided in the negative by French courts on the theory that this is a civil right accorded only to French married women. The author would ask only whether the law governing the marriage of the parties vested in her the right of lien. But this is a conflict of laws like others which arise from the creation of rights which cannot be completely enforced in the state where they were created. Whether a right acquired in one state shall be recognized in another involves the *question préalable* as to which shall be the governing law. We think, therefore, that while the classification may be usefully employed as embracing a certain group of conflicts, it fails as a test by which conflicts may be solved.

In the historical introduction the author also contrasts the principles

prevailing in France with those of other countries. He is inclined to believe that the Anglo-American tendency to apply territorial or local rules springs from our respect for ancient authority; that our laws in this field are far behind the times; and that only the intelligence of our judges makes them workable (p. 95). Yet he admits the results reached are often quite favorable to international life. If the guardian appointed abroad at the place of nationality or domicile has no rights as such in our courts over local property, at least the judge will usually consent, in a separate proceeding, to appoint the same person guardian who has been designated abroad (p. 96).

Nationality plays a rôle so important as a determinant of private rights under European systems that we are not surprised to observe that more than one hundred pages of the book are devoted to the complicated problems of the acquisition and loss of French nationality (pp. 177-284). Some of the modern complications growing out of separate nationality of married women are here discussed and the wise French rule is emphasized, lacking for example in England, by which a French woman who marries a foreigner does not lose her national status unless she thereby acquires a new nationality (p. 210).

The French rule of jurisdiction permitting French nationals to bring actions in France is dealt with at considerable length. The author is quite frank about the purpose of this old rule of the Napoleonic codes, with the correlative rule developed by judicial interpretation, that suits against nationals must be brought in France. Both rules he admits to be the result of conscious discrimination against foreigners (pp. 354-355). As such they are clearly a burden on international trade and, as the author indicates, even a possible cause of international complications (p. 355). It is too much to expect in this era, so similar in many respects to the period from which they trace their origin, that any amelioration will be found. We have here an excellent example of the influence of nationalism on private legal rights. These and others of like kind, found in other countries as well as France, though seldom taken into account in the chancelleries of diplomacy, nevertheless add legal to the political and economic barriers causing irritation in international intercourse. France has entered into treaties abolishing these discriminations with her friendly neighbors Belgium and Switzerland, and, to a more limited extent, with Spain. These treaties are analyzed by the author (pp. 431-485). They are held not to apply to the advantage of citizens of the United States under the most-favored-nation clause (p. 441).

The present volume deals also with conflicts in the status of persons, in family relations and, in an uncompleted portion, with conflicts in property rights. The author discusses the Hague conventions relating to marriage, divorce and guardianship. These, though denounced by France shortly prior to war, are still in effect between certain of the other signatories (p. 688).

The author tells us in the preface that this volume and the one to come represent the labors of twenty years of his life. There are not many pro-

ductive periods of this length in the life of any man. Professor Pillet's treatise will merit the highest standing as the matured judgment of a recognized authority who never for one moment loses his pragmatic view-point in an endeavor to conform his doctrines to the demands of international life.

ARTHUR K. KUHN.

Nociones de Derecho Internacional. By Miguel Cruchaga Tocornal. 3d ed. Vol. 1. Madrid: Editorial Reus (S. A.) Cañizares. pp. 648.

It is generally assumed by many in this country that Latin-American literature on the subject of international law is either non-existent or valueless or unimportant. As a matter of fact, it would not be very difficult to write out a long list of Latin-American publicists who have unquestionably enriched with valuable contributions the universal literature of international law, not only in a general way, covering the entire field of international law as a science and as a set of rules controlling the conduct of states in their international relations, but also on special topics which, while of peculiar interest to Latin Americans, are also of great interest to the world at large. Among the Latin-American publicists who have written on international law generally there may be mentioned, for instance, Don Andrés Bello, a Venezuelan by birth, and a Chilean by adoption, whose *Principios de Derecho Internacional*, originally published in 1832, has become a classic in Latin-American literature on international law. This may be followed by De Pando, a Peruvian, whose *Elementos de Derecho Internacional*, originally published in 1852 as a posthumous production, has been the subject of much criticism and, perhaps, undeserved ridicule, owing to the author's incorporation in his book, almost word for word, of a substantial part of Bello's treatise, apparently without giving him due credit for the quotations. There is also Matta Albuquerque, a Brazilian, whose *Elemento de Direito das Gentes*, published in 1851, is still cited as an authority, and Gomar, a Uruguayan, well known in Latin America for his *Curso Elemental de Derecho de Gentes*, originally published in 1864; Aspiazú, a Bolivian, whose *Dogmas de Derecho Internacional*, published in 1872, is also considered as an authority in all Latin America; Madieto, a Colombian, whose *Tratado de Derecho de Gentes, Internacional, Diplomático, y Consular* is very often cited in Latin America; Seijas, a Venezuelan, whose posthumous and unfinished work, entitled *El Derecho Internacional Hispano-Americano, Público y Privado*, published in 1884 on a plan similar to that in Moore's *Digest of International Law*, contains an important collection of diplomatic documents and precedents, very valuable to foreign chanceries in Latin America. There is also Calvo, an Argentinian, whose work on international law, written in French, has become one of the modern classics of international law throughout the civilized world; Alcorta, also an Argentinian, who has left us in the first volume of his *Tratado de Derecho Internacional*, published in 1887, a most interesting introduction to the study

of that science; Díez de Medina, a Bolivian, whose *Nociones de Derecho Internacional*, originally published in the last quarter of the last century, is still considered as an important authority in Latin America. So Tejada, a Guatemalan, who wrote in 1894, his *Derecho Internacional*; so also Pinto Rivadavia y Leguizamón, an Argentinian, whose *Derecho Internacional* was published in 1894; and so also Rodríguez Saráchaga, an Argentinian, whose *El Derecho Internacional Público* was published in 1900. I may also cite Ribeyro, a Peruvian, whose *Derecho Internacional Público*, published in 1901, has reached several editions and become quite an important authority on the subject; Flores, a Guatemalan, whose *Derecho Internacional*, was published in 1902; Bidau, an Argentinian, whose *Apuntes de Derecho Internacional Público* was published in 1906; Fernández Frida, a Chilean, *Estudios de Derecho Internacional Público y Privado*, 1902; Acosta, a Venezuelan, *Estudios de Derecho Internacional*, 1908; Sa Vianna, a Brazilian, *Elemento de Direito Internacional*, 1908; Bevilacqua, a Brazilian, *Direito Publico Internacional*, 1911; Zeballos y Weis, *Derecho Internacional*, 1911. Mention may be made also of Planas Suárez, whose *Tratado de Derecho Internacional Público*, published in two volumes in 1916, is rapidly becoming an authority on the general subject of international law; and Cruchaga Tocornal, whose *Nociones de Derecho Internacional*, now under review, has already attained the reputation of an authentic authority throughout the Latin-American countries.

Latin-American literature on international law is especially rich on topics of peculiar interest to Latin America, but space will not permit even a partial list of such works.

The volume under review is published by the well-known Editorial Reus Company of Madrid as Volume XLVII of the *Biblioteca Jurídica de Autores Españoles y Extranjeros* (Juridical Library of Spanish and Foreign Authors). It is, as above indicated, the first volume of the third edition of Cruchaga Tocornal's well-known treatise on international law, brought, so to speak, up to date. "In this third edition of the *Nociones de Derecho Internacional*," says the author, "I discuss the most important diplomatic happenings of the last few years, and present more extensive information in respect to matters of an international political character, in which the American countries have so far taken any part or especial interest." The purpose of this book is, as the author suggests, to make a survey of international law as it stands today. The work is intended as a text-book for the teaching of international law, and, for this reason, the author has endeavored to present a methodical exposition of his subject, with as great accuracy and precision as possible. The method followed is, indeed, the historical one, as being the most useful and adaptable to students.

In connection with the topic of intervention, the author has dedicated to a discussion of the Monroe Doctrine a whole chapter of over twenty pages, which is really deserving of more than passing notice. There is also a rather interesting chapter on the well-known Drago Doctrine, which culminated in

the so-called Porter resolution of the Second Peace Conference at The Hague. The chapters on the League of Nations are also very interesting. There is also a final chapter on the Permanent Court of International Justice.

It is really a pity that books like the one under review are not translated into English so that Latin-American writers might become better known by American readers.

PEDRO CAPÓ-RODRÍGUEZ.

BOOK NOTES

Approaches to World Problems. New Haven: Yale University Press. 1924. pp. 126. \$1.50.

This is another number in the series of publications of the Institute of Politics of Williams College at Williamstown, Massachusetts. It contains three addresses, one by the Earl of Birkenhead, entitled "Problems Left by the Great War," one by General Tasker H. Bliss, entitled "World Relations in their Bearing on International Peace and War," and the third by Philip Henry Kerr, divided into two parts, the first treating of "World Problems of Today," and the second, "World Law and World Peace." A foreword by the Institute of Politics states that these addresses illustrate three different methods of approach to the fundamental question of peace.

The Inter-Ally Debts: An Analysis of War and Post-War Public Finance, 1914-1923. By Harvey E. Fisk. New York-Paris: Bankers Trust Company. 1924. pp. 367.

This book, the Bankers Trust Company states, was published in response to many inquiries regarding the cost of the World War, how the money to meet it was raised and spent, and more particularly as a carefully compiled record of the debts between the Allies. The statistics are based on official data, and the publishers state that they have spared no effort to make the book authoritative.

International Law Decisions and Notes, 1922. Washington: Government Printing Office. 1924. pp. v, 212. 60 cents.

The discussions on international law at the Naval War College, conducted by Professor George Grafton Wilson, were devoted in the year 1922 to the subject of the decisions of the prize courts of the leading belligerents during the World War, and the present volume contains illustrative decisions selected mainly from the courts of Germany, France and Great Britain.

The International Law Association. Report of the Thirty-Second Conference held at the Old Hall, Lincoln's Inn, London, October 4, 1923. London: Sweet & Maxwell. 1924. pp. lxii, 51. 12s. 6d.

Owing to the sudden death of Dr. Zeballos, the President of the Conference, on the day it opened, the proceedings were brought to an abrupt and

untimely end. They were limited to the reading of a paper by Dr. Ernest J. Schuster on the subject of "The Effect of Marriage on Nationality," and a discussion of the paper by members present. At the conclusion of the discussion, Miss Chrystal MacMillan laid before the Conference a proposal of the International Woman Suffrage Alliance at its conference in Rome of a draft International Convention on the Nationality of Married Women, and the provisional draft is printed as an appendix to the report. The Right Honorable Lord Phillimore presided during the illness of Dr. Zeballos, and when the latter's death was announced, the dinner of the Society was cancelled and further proceedings were adjourned. The first sixty-two pages contain information regarding the Association, including its constitution, members, officers and committees, and branches.

Les Origines et l'Oeuvre de la Société des Nations. Tome I. Published by Rask-Orstedfonden under the direction of P. Munch. Copenhagen: Gyldendalske Boghandel-Nordisk Forlag. 1923. pp. 608.

The Rask-Orstedfonden is a fund instituted by the Danish Parliament in 1919 for the purpose of aiding in the development of Danish science in co-operation with international scientific studies. In 1921, the administrative committee decided to publish a scientific work on the League of Nations, with the collaboration of authors of different countries, and the present volume is the result of that decision. It is composed of a series of articles on the League of Nations by sixteen authors of various nationalities, including Norway, France, Germany, Denmark, Great Britain, the United States, the Netherlands, China, Sweden and Belgium. The covenant of the League of Nations is printed in the appendix. The article for the United States was written by Mr. Norman H. Davis, and is entitled "The Past and Probable Future Attitude of the United States."

Règlement de Procédure civile de la République de Chine. Pekin: La Commission de l'Exterritorialité. March, 1924. pp. xxi, 259. \$2.50.

Législation commerciale de la République de Chine. Pekin: La Commission de l'Exterritorialité. February, 1924. pp. xix, 213. \$2.50.

In our issue for April, 1924 (page 393), we gave an account of the work of the Commission on Extraterritoriality charged by the Chinese Government with the preparation of material for the eventual use of the international commission proposed by a resolution of the Conference at Washington on December 10, 1921, to inquire into the subject of the relinquishment of extraterritoriality in China. The present pamphlets are two more numbers in the series now being published by the Commission on Extraterritoriality. They are on sale by *La Librairie Française*, Pekin.

The British Year Book of International Law, 1924. London: Humphrey Milford. pp. vi, 268.

The fifth issue of this Year Book maintains the excellent standard of its predecessors. It contains ten leading papers, a number of interesting notes, judicial decisions, book reviews, a bibliography, and a summary of events during the year ended April 30, 1924. The leading paper is by Professor J. L. Brierly on the subject of "The Shortcomings of International Law." Other papers of especial interest to Americans are "The Codification of International Law," by Professor P. J. Baker, and "The Monroe Doctrine," by Professor A. Pearce Higgins. Among the notes, especial attention may be called to one on "The Applicability of the United States Prohibition Law to Foreign Ships Entering American Ports," and to another on "The Liquor Treaty between the British Empire and the United States of America." In the section of the volume relating to Judicial Decisions, Professor James W. Garner contributes a note on "The Decisions of the German-American Mixed Claims Commission."

Other leading papers are "The Legality of the Occupation of the Ruhr," by A. D. McNair; "The Trent and the China," by H. W. Malkin; "The Soviet Government and Russian Property in Foreign Countries," by Norman Bentwich; "The Free City of Danzig," by Malcolm M. Lewis; "What is the League of Nations," by P. E. Corbett; "The Grounds of Intervention in International Law," by P. H. Winfield; and "State Succession in Matters of Tort," by Sir Cecil J. B. Hurst.

Jurisprudence Française en Matière de Prises Maritimes. Paris: A. Pedone. Part I, 1916, pp. 272, 10 fr.; Part II, 1919, pp. 273-496, lxiv.

Jurisprudence Britannique en Matière de Prises Maritimes. Paris: Rousseau & Co. Part I, 1918, pp. 198, lxxx, 15 fr.; Part II, 1922, pp. 199-457, lxxxi-cxv. 22 fr. 50.

Jurisprudence Italienne en Matière de Prises Maritimes. Paris: Rousseau & Co. Part I, 1918, pp. lxiv, 224, 15 fr.; Part II, 1921, pp. lxxv-lxxix, 225-523. 22 fr. 50.

Jurisprudence Allemande en Matière de Prises Maritimes. Paris: Rousseau & Co. Part I, 1922, pp. 197, 25 fr.; Part II, 1924, pp. 193-329, xxxiv. 25 fr.

In 1916, M. Paul Fauchille undertook the publication in French of the prize decisions rendered during the World War by the high courts in France, Great Britain, Italy and Germany. The decisions have been translated into French and published in parts as above listed.

Accompanying the texts of the decisions, there are printed the texts of official documents relating to the subject of prize issued in the respective countries during the war. These texts have Roman pagination. In the preparation of the British and Italian cases, M. Jules Basdevant appears as co-editor with M. Fauchille, and in the preparation of the German decisions, M. Charles de Visscher appears in that capacity.

La Cuarta Asamblea de la Liga de las Naciones. By Cosme de la Torriente, President of the Cuban Delegation and President of the Assembly. Havana: Rambla, Bouza & Co., 1924. pp. 175.

This volume gives a full account of the work of the Fourth Assembly of the League of Nations, over which Señor de la Torriente was elected to preside. The organization of the Assembly and of its committees is shown, with details of the sessions held by each committee and of the numerous subjects dealt with by them. The work of the Assembly itself is completely reported and a summary of each session is given. The text of all resolutions, decisions and recommendations is printed in full. There is also included Señor de la Torriente's address as President of the Assembly at the close of the sessions, September 29, 1923, and the speeches made at the banquet given in his honor by the *Comité France-Amérique* at Paris on the 25th of October, at which M. Raymond Poincaré presided.

The present volume is the third which Señor de la Torriente has written on the League of Nations. His first work dealt with the Second Assembly, and was entitled *La Liga de las Naciones—Trabajos de la Segunda Asamblea* (Havana, 1922, 259 pages), and last year he published at Havana a volume of over 500 pages on the activities of the League of Nations (*Actividades de la Liga de las Naciones*).

Arbitration Treaties among the American Nations to the Close of the Year 1910.

Edited by William R. Manning. New York: Oxford University Press, American Branch. 1924. pp. xl, 472. \$3.50.

This compilation, issued by the Carnegie Endowment for International Peace, is designed to include not only all arbitration treaties, but also all arbitral clauses of other treaties which were signed between or among American nations before the close of 1910 and duly ratified. The texts are in the English language. The 228 treaty engagements to arbitrate here set out afford a useful compendium of the effective activity of the principle of arbitration in the New World. Detailed alphabetical and chronological tables make the contents of the volume readily found.

German White Book concerning the Responsibility of the Authors of the War.

Translated by the Carnegie Endowment for International Peace, Division of International Law. New York: Oxford University Press, American Branch. 1924. pp. xv, 178. \$2.00.

This volume consists mainly of the document entitled *German Observations on the Report of the Commission of the Allied and Associated Governments in the Responsibility of the Authors of the War*, which was prepared by a group of German scholars and publicists and transmitted by Count Brockdorff-Rantzau, May 28, 1919, to M. Clemenceau as President of the Peace Conference. The Endowment has added a serviceable list of official positions of the principal persons mentioned in the documents, and an index.

Preliminary History of the Armistice: Official Documents published by the German National Chancellery by Order of the Ministry of State. Translated by the Carnegie Endowment for International Peace, Division of International Law. New York: Oxford University Press, American Branch. 1924. pp. xii, 163. \$2.00.

This is also a German White Book, issued by the Republican Government of Germany in 1919, consisting of official German documents giving the various reasons which caused Germany to request an armistice from the Principal Allied and Associated Powers. The documents, which were taken from the archives of the German Foreign Office and from the Imperial Chancellery, cover the period between August 14 and November 11, 1918, and consist of the conferences and the deliberations that took place between the German Government and the Supreme Army Command after the latter had come to the conclusion, owing to the military reverses of July and August 1918, that German victory was no longer possible.

The JOURNAL has received from the publishers; Rousseau & Company, Paris, a brochure in French of 66 pages entitled *Le nouveau droit international public et sa codification en Amérique*, by Alejandro Alvarez. It is a detailed syllabus of the contents of a work under that title in two volumes which Dr. Alvarez intends to bring out and present to the meeting of the American jurists in Rio de Janeiro in 1925 for the purpose of codifying international law. Dr. Alvarez was a delegate of Chile to the Fourth and Fifth Panamerican Conferences, and of Ecuador to the meeting of American jurists in 1912 for the codification of international law.

La Codificación del Derecho Internacional en América, Trabajos de la Tercera Comisión de la Asamblea de Jurisconsultos reunida en Santiago de Chile. By Alejandro Alvarez. Santiago de Chili: Imprenta Universitaria, 1923.

This quarto volume of 144 pages is the second of a publication under the general title *Quinta Conferencia Internacional Americana* and consists of an historical sketch of the codification of international law in America from the Congress of Panama in 1826 to the present time, including the texts of the five projects provisionally approved by the Third Commission of the Fifth International American Conference of which Dr. Alvarez was the reporter (*ponente*), as well as other projects advocated by him and a plan for the codification of international law.

BOOKS RECEIVED.¹

Anglo-American Relations during the Spanish-American War. By Bertha Ann Reuter, Associate Professor in Wesleyan College, Georgia. New York: The MacMillan Company. 1924. pp. viii, 208. \$1.75.

¹ Mention here does not preclude an extended notice in a later issue of the JOURNAL.

Au service des Prisonniers de Guerre, 1914-1919. By A. d'Anthouard. Paris: Librairie Bloud & Gay. 1924. pp. vii, 239.

Les Bombardements Aériens. By J. Bouruet-Aubertot. Paris: Les Presses Universitaires de France. 1923. pp. 102. 5 fr.

Don Manuel Eduardo de Gorostiza y la Cuestion de Texas. By Antonio de la Peña y Reyes. Mexico: Publicaciones de la Secretaria de Relaciones Exteriores. 1924. pp. 206.

L'Entrée de la Suisse dans la Société des Nations. By William E. Rappard. Geneva: S. A. des Éditions Sonor. 1924. pp. iv, 81.

Les Finances de la Société des Nations. By H. F. A. Völlmar. The Hague: Martinus Nijhoff. 1924. pp. xii, 116.

Le Droit des Armoiries. Essai de Systématisation et de Construction Théorique. By Pierre J. Nisot. Brussels: P. Dykmans, 1924. pp. 189.

Le Droit International des Communications. Cours professé à l'Institut des Hautes Etudes Internationales de Paris (1921 et 1923). By Charles de Visscher. Ghent: Librairie Moderne, A. Buyens. Paris: A. Rousseau. pp. 151.

Citizenship. By W. H. Hadow, Vice-Chancellor of Sheffield University. New York: Oxford University Press (American Branch), 1923. pp. x, 240. \$2.00.

Le Droit Pénal de la Rhénanie Occupée. By Pierre Huguet. Paris: Les Presses Universitaires de France. 1923. pp. 247.

Immunity of State Ships: As a contribution towards unification of the laws on the subject. By Dr. N. Matsunami, Professor of Tokyo University. London: Richard Flint & Company. 1924. pp. xv, 208.

International Law for Naval Officers. By Commander C. C. Soule and Lieutenant Commander C. McCauley. Annapolis: Naval Institute. 1923. pp. 183.

Legislacion Internacional del Aire. By Luis Machado. Habana: Imprenta "El Siglo XX". 1923. pp. 27.

The Monroe Doctrine Centenary. Addresses delivered at the Brazilian Society of International Law's solemn session, on 2 December 1923, in commemoration of the first centenary of President James Monroe's declaration of principles. Rio de Janeiro: Typ. do Jornal do Commercio, de Rodrigues & C. 1924. pp. 68.

The Neutral Investigation of the Causes of Wars. By Herman Harris Aall. Kristiania: Herman Harris Aall. 1923. pp. 161, xiv.

A New American Commercial Policy. By Wallace McClure. New York: Columbia University. 1924. pp. 397. \$4.00.

New Governments of Central Europe. By Malbone W. Graham, Jr., University of Texas, assisted by Robert C. Binkley, Stanford University. New York: Henry Holt and Co. 1924. pp. x, 683.

L'Ordinamento Politico e Giuridico della Repubblica di San Marino e la sua Situazione Internazionale. By Professor A. Sottile. San Marino: Arti Grafiche Sammarinesi. 1923. pp. 36.

Our Foreign Affairs. By Paul Scott Mowrer. New York: E. P. Dutton & Co., 1924. pp. xii, 348. \$3.50.

Prisoners of War. By Herbert C. Fooks. Federalsburg, Maryland: J. W. Stowell Printing Co., 1924. pp. xxiv, 456. il.

Problem of the Pacific and the New Policies of Bolivia. By Luis Barros Borgoño, together with two juridical reports by John W. Davis. Baltimore: The Sun Job Printing Office. 1924. pp. vii, 191.

La Procédure de Compensation: Contribution a la Critique du Traité de Versailles et de son Exécution. By Dr. Arthur Nussbaum. Tübingen: J. C. B. Mohr (Paul Siebeck). 1923. pp. 48.

Raw Materials and Foodstuffs in the Commerical Policies of Nations. By William S. Culbertson. Philadelphia: The American Academy of Political and Social Science. 1924. pp. v, 298.

The Reasonableness of the Law: The Adaptability of Legal Sanctions to the Needs of Society. By Charles W. Bacon and Franklyn S. Morse, with an Introduction by James A. Woodburn. New York: G. P. Putnam's Sons. 1924. pp. xii, 400.

Die Satzung des Völkerbundes. By Walther Schücking and Hans Wehberg. Berlin: Verlag von Franz Vahlen. 1924. pp. xxvii, 794.

A Short History of International Intercourse. By C. Delisle Burns. New York: Oxford University Press (American Branch), 1924. pp. 159.

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- British Year Book of International Law, 1924. *BN.* 869.
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- . The Individual and International Law. *Ed.* 532.
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- Day, William R. Memorial resolution. 517.
- Death by wrongful act, damages for. Lusitania case. Mix. Cl. Com. U. S.-Germany. *JD.* 361.
- Death penalty, Extradition treaties and the. J. S. Reeves, *Ed.* 298.
- Debts, foreign, to the United States, Settlement of. *CN.* 550.
- Defaults in German reparation payments. London agreement. 715.
- Deliveries in kind under Dawes plan. London agreement. 712.
- Denby, Charles. Extraterritoriality in China. *LA.* 667.
- Dennis, Alfred L. P. The Foreign Policies of Soviet Russia. *BR.* 640.
- Dennis, William C. Elected Corresponding Secretary. 517.
- . Extraterritoriality in China. *Ed.* 781.
- Diplomacy of Russia.* Un livre noir. Diplomatie d'avant-guerre d'après les documents des archives russes. Novembre 1910-juillet 1914. *BR.* 212.
- Diplomatic documents and practice.* Die Lehre von den Voelkerrechtlichen Vertragsurkunden. L. Bittner. *BR.* 849.
- Diplomatic protection of citizens abroad.* Nederlandsche Diplomatieke en andere Bescherming in den Vreemde, 1795-1914. L. Spanjaard. *BR.* 659.
- Diplomatic protection of contracts. Great Britain v. Costa Rica. *JD.* 157.
- Diplomatic representatives, protection of. The Imbrie incident. E. C. Stowell. *Ed.* 771.
- Diplomatic service of United States, reorganization of. G. A. Finch, *CN.* 549; J. W. Garner, *Ed.* 774; J. J. Rogers, *CN.* 791.
- Discriminatory treatment of certain nationals justified. Am. Br. Cl. Arb. *JD.* 835.
- Documents pour servir à l'Histoire du Droit des gens. K. Strupp. *BN.* 394.
- Domestic questions within League of Nations Covenant. 4.
- Domestic relations of foreigners in Turkey. Settlement of Lausanne. P. M. Brown, *Ed.* 113; E. Turlington, *LA.* 699.
- Dominican Republic. Reasons for nonmembership in League of Nations. 448.
- Dominio Maris Dissertatio. C. van Bynkershoek. *BR.* 850.
- Drottning Sophia, The, 1920 P. 200. *Cited.* 501.
- Dulles, A. W. Remarks on recognition of Greece. *Summarized.* 511.
- Dumping: A Problem in International Trade. J. Viner. *BR.* 391.
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- Dusseldorf, The, 1920 A. C. 1034. *Cited.* 500.
- Earle, Edward M. Turkey, the Great Powers and the Bagdad Railway. *BR.* 382.
- East and West, Contacts of. F. J. Goodnow. *Ad. summarized.* 513.
- Eastern Carelia Question. M. O. Hudson, *LA.* 7; T. Kalijarvi, *LA.* 93.
- Eastern Extension, Australasia & China Tel. Co. Am. Br. Cl. Arb. *JD.* 835.
- Eastern Steamship Lines, Inc. v. Germany. Mix. Cl. Com. U. S.-Germany. *JD.* 611.
- Economic Imperialism and International Relations during the Last Fifty Years. A. Viallate. *BR.* 218.
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- Egypt. Reasons for nonmembership in League of Nations. 448.
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- Ejusdem generis. Legality of Ruhr occupation. E. J. Schuster. *LA.* 412.
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- Elbe river boats and material. Cession to Czechoslovakia. W. D. Hines. *JD.* 186.
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- Elida, The, Imp. High Pr. Ct. Berlin, 1915. *Cited.* 483.
- Elisa, The, Spinks 88. *Cited.* 501.
- Enemy private property. E. M. Borchard. *Ed.* 523.
- Enemy Property in America. A. G. Hays. *BR.* 202.
- Equality of states. J. B. Scott, *LA.* 263; *Ed.* 116.
- Equality of States: A Study in the History of Law. J. Goebel, Jr. *BR.* 386.
- Esthonia. Admission to League of Nations. 444, 455, 456.
- Estoppel in international law. Great Britain v. Costa Rica. *JD.* 147.
- . Legality of Ruhr Occupation. E. J. Schuster. *LA.* 407.
- Ethics of Opium. E. N. LaMotte. *BR.* 649.
- Europe and Germany. H. Kessler. *BN.* 398.
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- Expulsions under Immigration Act of 1924. A. W. Parker. *LA.* 750.
- Extradition treaties and the death penalty. J. S. Reeves. *Ed.* 298.
- Extraterritorial Commission of China. Penal code and regulations. *BN.* 393.
- . Civil procedure and commercial legislation. *BN.* 868.
- Extraterritoriality in China. Charles Denby, *LA.* 667; W. C. Dennis, *Ed.* 781; N. Wing Mah, *LA.* 676.
- Far Eastern Republic of Siberia. H. K. Norton. *BR.* 213.
- . A Product of Intervention. H. S. Quigley. *LA.* 82.
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- . International Law, *BR.* 853; *quoted,* 759.
- . Remarks on legal and political questions. *Summarized.* 508.
- . Lucien-Brun, Le Problème des Minorités. *BR.* 653.
- . National security and international arbitration. *Ed.* 777.
- . Redslob, Histoire des Grands Principes du Droit des Gens. *BR.* 214.
- Ferrater, Esteban de. Código de derecho internacional. *Cited.* 267.
- Field, D. D. Code of international law, *cited,* 268; *quoted on treaties,* 44.
- Field, Mr. Justice. Quoted on land ownership by aliens. *JD.* 350.
- Fiji Land Claims. Am. Br. Cl. Arb. *JD.* 814.
- Finch, George A. Annual Meeting of American Society of International Law. *Ed.* 507.
- . Dawes report on German reparation payments, *LA.* 419; London conference, *LA.* 708.
- . Editorial on occupation of Ruhr. *Cited.* 414.
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 ———. Reorganization of the foreign service. *Ed.* 774.
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- Giolitti, Giovanni. *Memoirs of My Life.* *BR.* 855.
- Goebel, Julius, Jr. *The Equality of States: A Study in the History of Law.* *BR.* 386.
- Gooch, G. P. and A. W. Ward. *Cambridge History of British Foreign Policy, 1783-1919.* *BR.* 219.
- Goodnow, Frank J. *Remarks at annual dinner. Summarized.* 513.
- Gottlieb v. Commissioner of Immigration, U. S. Sup. Ct. *Cited.* 747.
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- Gregory, Charles Noble, Lawrence, *Principles of International Law.* *BR.* 204.
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- Hill, Cyril D. Citizenship of Married Women. *LA.* 721.
- Hill, David Jayne. Asquith, The Genesis of the War. *BR.* 845.
- . The Janina-Corfu-Affair. *Ed.* 98.
- Hines, Walker D. Cessions by Germany to Czecho-Slovakia. *JD.* 186.
- Hispanic-American Relations with the United States. W. S. Robertson. *BR.* 215.
- Histoire des Grands Principes du Droit des Gens, depuis l'Antiquité jusqu'à la Veille de la Grande Guerre. R. Redslob. *BR.* 214.
- Hobbes, De Corpore Politico. Definition of war. 764.
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- International Law. Charles G. Fenwick. *BR.* 853.
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- International Law and Relations, Selected Documents and Material for the study of. J. E. Harley. *BR.* 388.
- International Law and some Current Illusions. J. B. Moore. *BR.* 858.
- International Law, British Year Book of, 1924. *BN.* 869.
- International Law.* Histoire des Grands Principes du Droit des Gens, depuis l'Antiquité jusqu'à la Veille de la Grande Guerre. R. Redslob. *BR.* 214.
- . Le Problème des Minorités. J. Lucien-Brun. *BR.* 653.
- . Documents pour servir à l'Histoire du Droit des Gens. K. Strupp. *BN.* 395.
- . La Question Juive devant le droit international Public. E. Cohen. *BR.* 380.
- International Law.* Nociones de Derecho Internacional. M. C. Tocornal. *BR.* 865.
- International Law Association. Report of 32nd Conference. *BN.* 867.
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- International Rivers, Danube and Rhine, Régime of J. P. Chamberlain. *BR.* 637.
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- International Women Suffrage Alliance: Draft convention on citizenship of married women. *Text.* 735.
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- Kuhn, Arthur K.:
 Brown, International Society: Its Nature and Interests. *BR.* 199.
 League of Nations report on negotiable instruments law. *Ed.* 787.
 Pillet, *Traité pratique de Droit International Privé.* *BR.* 863.
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- Legislative Series of the International Labor Office. *BN.* 396.

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- Leiden University Law Faculty. International prize-subject. *CN.* 324.
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- Livre Noir, Un. Diplomatie d'avant-guerre d'après les documents des archives russes. Novembre 1910-juillet 1914. *BR.* 212.
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- Lucas, Sir Charles. Partition and Colonization of Africa. *BR.* 209.
- Lucien-Brun, J. Le Problème des Minorités devant le Droit International. *BR.* 653.
- Luna, The, Edw. 190. *Cited.* 500.
- Lusitania case, The, 139 N. E. 715. *Cited.* 762.
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- . Status of inhabitants of. Q. Wright. *Ed.* 306.
- . Treaties between France and United States. Q. Wright. *Ed.* 786.
- Manila cables cut in Spanish-American War. Am. Br. Cl. Arb. *JD.* 835.
- Manning, Commentaries. Definition of war. 764.
- Manning, William R. Arbitration Treaties among American Nations. *BN.* 870.
- . Robertson, Hispanic-American Relations with the United States. *BR.* 215.
- Marchand, René. Un livre noir. Diplomatie d'avant-guerre d'après les documents des archives russes. Novembre 1910-juillet 1914. *BR.* 212.
- Maria, The, 4 C. Rob. 348. *Cited.* 502.
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- Marshall, John. Quoted on enemy private property, 523; on the equality of states, 264.
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- Memoirs of My Life. Giovanni Giolitti. *BR.* 855.
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- Military and naval works or materials. Definition. Mix. Cl. Com. U. S.-Germany. *JD.* 614.
- Milligan, Exparte, 4 Wall. 2. *Cited.* 763.
- Minorities. Le Problème des Minorités. J. Lucien-Brun. *BR.* 653.
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———. Marchand, Un livre noir. Diplomatie d'avant-guerre d'après les documents des archives russes. Novembre 1910–juillet 1914. *BR.* 212.

National security and international arbitration. C. G. Fenwick. *Ed.* 777.

Nationality. Citizenship of married women. C. D. Hill. *LA.* 721.

———. How determined. Immigration Act of 1924. A. W. Parker. *LA.* 738.

———. In French protectorates of Tunis and Morocco. M. O. Hudson. *LA.* 2.

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Naval War College. International Law Decisions and Notes, 1922. *BN.* 867.

———. International Law Documents, 1923. *BN.* 398.

Near East. Participation of United States in. C. E. Hughes. *LA.* 237.

Nederlandsche Diplomatieke en andere Bescherming in den Vreemde, 1795–1914. L. Spanjaard. *BR.* 659.

Negotiable instruments law, League of Nations report on. A. K. Kuhn. *Ed.* 787.

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Neutral cables in war, cutting of. Am. Br. Cl. Arb. Eastern Extension, Australasia & China Tel. Co., *JD.* 835; Cuba Submarine Tel. Co., *JD.* 842.

Neutrality period between Germany and United States, 1914–1917. *JD.* 175.

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- Outlawry of war. Q. Wright. *LA.* 757.
- Ozawa v. United States. 260. U. S. 178. *Cited.* 519.
- Palestine. American rights in mandated territory. C. E. Hughes. *LA.* 243.
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- Pinar del Rio, S. S. Mix. Cl. Com. U. S.-Germany. *JD.* 625.
- Piracy and Privateering in the Colonial Period. J. F. Jameson. *BR.* 643.
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- Private property on high seas. When does title to prize pass? S. A. Herzog. *LA.* 439, 495.
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- Prize Cases, The, 2 Black 635. *Cited.* 763.
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- Prometheus, The, 2 Hongkong Law Rep. 207. *Cited.* 261.
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- Redslob, Robert. Histoire des Grands Principes du Droit des Gens, depuis l'Antiquité jusqu'à la Veille de la Grande Guerre. *BR.* 214.
- Recapture. When does title to prize pass? S. A. Herzog. *LA.* 483.
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TREATY WITH TURKEY AND OTHER INSTRUMENTS SIGNED AT LAUSANNE JULY 24, 1923¹

FINAL ACT

The Governments of the British Empire, France and Italy, in agreement with the Government of Japan, being desirous of finally reestablishing peace in the East, and having invited on the one hand Greece, Roumania, the Serb-Croat-Slovene State, and also the United States of America, and on the other hand Turkey, to examine together the arrangements by which a result equally desired by all the nations might be achieved;

And considering further that among the subjects falling to be dealt with by this conference the question of the Straits ought to be specially examined, Bulgaria and Russia, as littoral Powers of the Black Sea, being invited to participate in the negotiations and the decisions to be taken;

And having decided that Belgium and Portugal should be allowed to take part in the discussion on the economic and financial questions which arose for those two Powers from the state of war in the East;

In consequence the delegates hereafter mentioned met at Lausanne:

FOR THE BRITISH EMPIRE:

The Most Honorable George Nathaniel, Marquess Curzon of Kedleston, K.G., G.C.S.I., G.C.I.E., Secretary of State for Foreign Affairs;

The Right Honorable Sir Horace George Montagu Rumbold, Baronet, G.C.M.G., High Commissioner at Constantinople;

FOR FRANCE:

M. Camille Barrère, Ambassador of the French Republic to His Majesty the King of Italy, Grand Cross of the National Order of the Legion of Honor;

M. Maurice Bompard, Senator, Ambassador of France, Grand Officer of the National Order of the Legion of Honor;

General Maurice Pellé, Ambassador of France, High Commissioner of the Republic in the East, Grand Officer of the National Order of the Legion of Honor;

FOR ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom, Ambassador of Italy, High Commissioner at Constantinople, Grand Cross of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy;

¹ British Treaty Series, No. 16 (1923). Space permits printing only a part of these documents in the present SUPPLEMENT. The remainder will be printed in the next issue.—Ed.

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Plenipotentiary at Athens, Commander of the Order of Saints Maurice and Lazarus, Grand Officer of the Crown of Italy;

FOR JAPAN:

Baron Hayashi, Junii, First Class of the Order of the Rising Sun, Ambassador Extraordinary and Plenipotentiary at London;

Mr. Kentaro Otchiai, Jusammi, First Class of the Order of the Rising Sun, Ambassador Extraordinary and Plenipotentiary at Rome;

FOR GREECE:

M. Eleftherios K. Veniselos, formerly President of the Council of Ministers, Grand Cross of the Order of the Savior;

M. Demetrios Caclamano, Minister Plenipotentiary at London, Commander of the Order of the Savior;

FOR ROUMANIA:

M. Ion G. Duca, Minister for Foreign Affairs;

M. Constantine I. Diamanday, Minister Plenipotentiary;

M. Constantine Contzesco, Minister Plenipotentiary;

FOR THE SERB-CROAT-SLOVENE STATE

M. Montchilo Nintchitch, Minister for Foreign Affairs;

M. Miroslav Spalaikovitch, Envoy Extraordinary and Minister Plenipotentiary at Paris;

M. Milan Rakitch, Envoy Extraordinary and Minister Plenipotentiary at Sofia;

Dr. Milutin Yovanovitch, Envoy Extraordinary and Minister Plenipotentiary at Berne;

FOR THE UNITED STATES OF AMERICA:

The Honorable Richard Washburn Child, Ambassador of the United States at Rome;

Rear Admiral Mark L. Bristol, High Commissioner of the United States at Constantinople;

The Honorable Joseph C. Grew, Minister of the United States at Berne;

FOR TURKEY:

Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople;

Dr. Riza Nour Bey, Minister for Health and for Public Assistance, Deputy for Sinope;

Hassan Bey, formerly Minister, Deputy for Trebizond;

FOR BULGARIA:

M. Alexander Stamboliisky, President of the Council, Minister for Foreign Affairs;

M. Dimitri Stancioff, Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary at London, Grand Cross of the Order of Saint Alexander;

M. Kosta Todoroff, Envoy Extraordinary and Minister Plenipotentiary at Belgrade;

Subsequently:

M. Bogdan Morphoff, formerly Minister of Railways, Posts and Telegraphs;

FOR RUSSIA:

M. George V. Chicherin;

M. Christian G. Rakovsky;

M. Polikarp G. Mdivani;

M. Watzlaw W. Vorowski;

FOR BELGIUM:

M. F. Peltzer, Officer of the Order of Leopold, Envoy Extraordinary and Minister Plenipotentiary at Berne;

FOR PORTUGAL:

M. Antonio Maria Bartholomew Ferreira, Envoy Extraordinary and Minister Plenipotentiary at Berne, Commander of the Order of Saint James and the Sword.

As the result of meetings held between the 20th November, 1922, and the 24th July, 1923, during which certain other Powers had the opportunity of presenting their views on the questions which they considered of interest to themselves, the instruments hereafter mentioned have been drawn up:—

- I. Treaty of peace, signed the 24th July, 1923.
- II. Convention respecting the régime of the Straits, signed the 24th July, 1923.
- III. Convention respecting the Thracian frontiers, signed the 24th July, 1923.
- IV. Convention respecting conditions of residence and business and jurisdiction, signed the 24th July, 1923.
- V. Commercial convention, signed the 24th July, 1923.
- VI. Convention respecting the exchange of Greek and Turkish populations, and protocol, signed the 30th January, 1923.
- VII. Græco-Turkish agreement on the restitution of interned civilians and the exchange of prisoners of war, signed the 30th January, 1923.
- VIII. Amnesty declaration, and protocol, signed the 24th July, 1923.
- IX. Declaration relating to Moslem properties in Greece, signed the 24th July, 1923.
- X. Declaration relating to sanitary matters, signed the 24th July, 1923.
- XI. Declaration relating to the administration of justice, signed the 24th July, 1923.
- XII. Protocol relating to certain concessions granted in the Ottoman Empire, and declaration, signed the 24th July, 1923.
- XIII. Protocol relating to the accession of Belgium and Portugal to certain provisions of instruments signed at Lausanne, and declarations of these two Powers concerning such accession, signed the 24th July, 1923.

- XIV. Protocol relating to the evacuation of the Turkish territory occupied by the British, French and Italian forces, and declaration, signed the 24th July, 1923.
- XV. Protocol relating to the Karagatch territory and to the islands of Imbros and Tenedos, signed by the British Empire, France, Italy, Japan, Greece and Turkey on the 24th July, 1923.
- XVI. Protocol, signed on the 24th July, 1923, relating to the treaty, concluded at Sèvres between the Principal Allied Powers and Greece on the 10th August, 1920, concerning the protection of minorities in Greece, and to the treaty relating to Thrace concluded on the same day between the same Powers.
- XVII. Protocol relating to signature by the Serb-Croat-Slovene State, signed the 24th July, 1923.

The originals of the above-mentioned instruments, as well as of the present act, shall remain deposited in the archives of the Government of the French Republic, and certified copies of each shall be delivered by that Government to the Powers which signed or acceded or adhered to it, as the case may be, and also to the Powers which signed the Treaty of Peace.

In faith whereof the undersigned have signed and sealed the present act.

Done at Lausanne, the 24th July, 1923, in a single copy.

[L.S.] HORACE RUMBOLD.

[L.S.] M. ISMET.

[L.S.] PELLÉ.

[L.S.] DR. RIZA NUR.

[L.S.] GARRONI.

[L.S.] HASSAN.

[L.S.] G. C. MONTAGNA.

[L.S.] B. MORPHOFF.

[L.S.] K. OTCHIAI.

[L.S.] STANCIOFF.

[L.S.] E. K. VENISELOS.

[L.S.] FERNAND PELTZER.

[L.S.] CONST. DIAMANDY.

[L.S.] A. M. BARTHOLOMEU FERREIRA.

[L.S.] CONST. CONTZESCO.

I. TREATY OF PEACE

The British Empire, France, Italy, Japan, Greece, Roumania and the Serb-Croat-Slovene State, of the one part, and Turkey, of the other part;

Being united in the desire to bring to a final close the state of war which has existed in the East since 1914,

Being anxious to reestablish the relations of friendship and commerce which are essential to the mutual well-being of their respective peoples,

And considering that these relations must be based on respect for the independence and sovereignty of states,

Have decided to conclude a treaty for this purpose, and have appointed as their plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Sir Horace George Montagu Rumbold, Baronet,
G.C.M.G., High Commissioner at Constantinople;

THE PRESIDENT OF THE FRENCH REPUBLIC:

General Maurice Pellé, Ambassador of France, High Commissioner of
the Republic in the East, Grand Officer of the National Order of the
Legion of Honor;

HIS MAJESTY THE KING OF ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom,
Ambassador of Italy, High Commissioner at Constantinople, Grand
Cross of the Orders of Saints Maurice and Lazarus, and of the Crown
of Italy;

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Pleni-
potentiary at Athens, Commander of the Orders of Saints Maurice
and Lazarus, Grand Officer of the Crown of Italy;

HIS MAJESTY THE EMPEROR OF JAPAN:

Mr. Kentaro Otchiai, Jusammi, First Class of the Order of the Rising
Sun, Ambassador Extraordinary and Plenipotentiary at Rome;

HIS MAJESTY THE KING OF THE HELLENES:

M. Eleftherios K. Veniselos, formerly President of the Council of Minis-
ters, Grand Cross of the Order of the Savior;

M. Demetrios Caclamano, Minister Plenipotentiary at London, Com-
mander of the Order of the Savior;

HIS MAJESTY THE KING OF ROUMANIA:

M. Constantine I. Diamandy, Minister Plenipotentiary;

M. Constantine Contzesco, Minister Plenipotentiary;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Dr. Miloutine Yovanovitch, Envoy Extraordinary and Minister Pleni-
potentiary at Berne;

THE GOVERNMENT OF THE GRAND NATIONAL ASSEMBLY OF TURKEY:

Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople;

Dr. Riza Nour Bey, Minister for Health and for Public Assistance,
Deputy for Sinope;

Hassan Bey, formerly Minister, Deputy for Trebizond;

Who, having produced their full powers, found in good and due form,
have agreed as follows:—

PART I.—POLITICAL CLAUSES

ARTICLE 1

From the coming into force of the present treaty, the state of peace will
be definitely reestablished between the British Empire, France, Italy, Japan,
Greece, Roumania and the Serb-Croat-Slovene State of the one part, and
Turkey of the other part, as well as between their respective nationals.

Official relations will be resumed on both sides and, in the respective terri-
tories, diplomatic and consular representatives will receive, without preju-

dice to such agreements as may be concluded in the future, treatment in accordance with the general principles of international law.

SECTION I

1. TERRITORIAL CLAUSES

ARTICLE 2

From the Black Sea to the Ægean the frontier of Turkey is laid down as follows (see map No. 1).²

(1) *With Bulgaria:*

From the mouth of the River Rezvaya, to the River Maritza, the point of junction of the three frontiers of Turkey, Bulgaria and Greece:

The southern frontier of Bulgaria as at present demarcated;

(2) *With Greece:*

Thence to the confluence of the Arda and the Maritza:

the course of the Maritza;

then upstream along the Arda, up to a point on that river to be determined on the spot in the immediate neighborhood of the village of Tchörek-Keuy:

the course of the Arda;

thence in a south-easterly direction up to a point on the Maritza, 1 kilom. below Bosna-Keuy:

a roughly straight line leaving in Turkish territory the village of Bosna-Keuy. The village of Tchörek-Keuy shall be assigned to Greece or to Turkey according as the majority of the population shall be found to be Greek or Turkish by the commission for which provision is made in Article 5, the population which has migrated into this village after the 11th October, 1922, not being taken into account;

thence to the Ægean Sea:

the course of the Maritza.

ARTICLE 3

From the Mediterranean to the frontier of Persia, the frontier of Turkey is laid down as follows:

(1) *With Syria:*

The frontier described in Article 8 of the Franco-Turkish agreement of the 20th October, 1921;

(2) *With Iraq:*

The frontier between Turkey and Iraq shall be laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months.

In the event of no agreement being reached between the two governments within the time mentioned, the dispute shall be referred to the Council of the League of Nations.

²Omitted from this SUPPLEMENT.

The Turkish and British Governments reciprocally undertake that, pending the decision to be reached on the subject of the frontier, no military or other movement shall take place which might modify in any way the present state of the territories of which the final fate will depend upon that decision.

ARTICLE 4

The frontiers described by the present treaty are traced on the one in a million maps attached to the present treaty. In case of divergence between the text and the map, the text will prevail.

ARTICLE 5

A boundary commission will be appointed to trace on the ground the frontier defined in Article 2 (2). This commission will be composed of representatives of Greece and of Turkey, each Power appointing one representative, and a president chosen by them from the nationals of a third Power.

They shall endeavor in all cases to follow as nearly as possible the descriptions given in the present treaty, taking into account as far as possible administrative boundaries and local economic interests.

The decision of the commission will be taken by a majority and shall be binding on the parties concerned.

The expenses of the commission shall be borne in equal shares by the parties concerned.

ARTICLE 6

In so far as concerns frontiers defined by a waterway as distinct from its banks, the phrases "course" or "channel" used in the descriptions of the present treaty signify, as regards non-navigable rivers, the median line of the waterway or of its principal branch, and, as regards navigable rivers, the median line of the principal channel of navigation. It will rest with the boundary commission to specify whether the frontier line shall follow any changes of the course or channel which may take place, or whether it shall be definitely fixed by the position of the course or channel at the time when the present treaty comes into force.

In the absence of provisions to the contrary, in the present treaty, islands and islets lying within three miles of the coast are included within the frontier of the coastal state.

ARTICLE 7

The various states concerned undertake to furnish to the boundary commission all documents necessary for its task, especially authentic copies of agreements fixing existing or old frontiers, all large scale maps in existence, geodetic data, surveys completed but unpublished, and information concerning the changes of frontier watercourses. The maps, geodetic data, and surveys, even if unpublished, which are in the possession of the Turkish authorities, must be delivered at Constantinople with the least possible de-

lay from the coming into force of the present treaty to the president of the commission.

The states concerned also undertake to instruct the local authorities to communicate to the commission all documents, especially plans, cadastral and land books, and to furnish on demand all details regarding property, existing economic conditions and other necessary information.

ARTICLE 8

The various states interested undertake to give every assistance to the boundary commission, whether directly or through local authorities, in everything that concerns transport, accommodation, labor, materials (sign posts, boundary pillars) necessary for the accomplishment of its mission.

In particular, the Turkish Government undertakes to furnish, if required, the technical personnel necessary to assist the boundary commission in the accomplishment of its duties.

ARTICLE 9

The various states interested undertake to safeguard the trigonometrical points, signals, posts or frontier marks erected by the commission.

ARTICLE 10

The pillars will be placed so as to be intervisible. They will be numbered, and their position and their number will be noted on a cartographic document.

ARTICLE 11

The protocols defining the boundary and the maps and documents attached thereto will be made out in triplicate, of which two copies will be forwarded to the governments of the limitrophe states, and the third to the Government of the French Republic, which will deliver authentic copies to the Powers who sign the present treaty.

ARTICLE 12

The decision taken on the 13th February, 1914, by the Conference of London, in virtue of Articles 5 of the Treaty of London of the 17th-30th May, 1913, and 15 of the Treaty of Athens of the 1st-14th November, 1913, which decision was communicated to the Greek Government on the 13th February, 1914, regarding the sovereignty of Greece over the islands of the Eastern Mediterranean, other than the islands of Imbros, Tenedos and Rabbit Islands, particularly the islands of Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria, is confirmed, subject to the provisions of the present treaty respecting the islands placed under the sovereignty of Italy which form the subject of Article 15.

Except where a provision to the contrary is contained in the present

treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty.

ARTICLE 13

With a view to ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Nikaria:

(1) No naval base and no fortification will be established in the said islands.

(2) Greek military aircraft will be forbidden to fly over the territory of the Anatolian coast. Reciprocally, the Turkish Government will forbid their military aircraft to fly over the said islands.

(3) The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory.

ARTICLE 14

The islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organization composed of local elements and furnishing every guarantee for the native non-Moslem population in so far as concerns local administration and the protection of person and property. The maintenance of order will be assured therein by a police force recruited from amongst the local population by the local administration above provided for and placed under its orders.

The agreements which have been, or may be, concluded between Greece and Turkey relating to the exchange of the Greek and Turkish populations will not be applied to the inhabitants of the islands of Imbros and Tenedos.

ARTICLE 15

Turkey renounces in favor of Italy all rights and title over the following islands: Stampalia (Astrapalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calymnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), and Cos (Kos), which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castellorizzo (see map No. 2).³

ARTICLE 16

Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present treaty and the islands other than those over which her sovereignty is recognized by the said treaty, the future of these territories and islands being settled or to be settled by the parties concerned.

³ Omitted from this SUPPLEMENT.

The provisions of the present article do not prejudice any special arrangements arising from neighborly relations which have been or may be concluded between Turkey and any limitrophe countries.

ARTICLE 17

The renunciation by Turkey of all rights and titles over Egypt and over the Soudan will take effect as from the 5th November, 1914.

ARTICLE 18

Turkey is released from all undertakings and obligations in regard to the Ottoman loans guaranteed on the Egyptian tribute, that is to say, the loans of 1855, 1891 and 1894. The annual payments made by Egypt for the service of these loans now forming part of the service of the Egyptian Public Debt, Egypt is freed from all other obligations relating to the Ottoman Public Debt.

ARTICLE 19

Any questions arising from the recognition of the State of Egypt shall be settled by agreements to be negotiated subsequently in a manner to be determined later between the Powers concerned. The provisions of the present treaty relating to territories detached from Turkey under the said treaty will not apply to Egypt.

ARTICLE 20

Turkey hereby recognizes the annexation of Cyprus proclaimed by the British Government on the 5th November, 1914.

ARTICLE 21

Turkish nationals ordinarily resident in Cyprus on the 5th November, 1914, will acquire British nationality subject to the conditions laid down in the local law, and will thereupon lose their Turkish nationality. They will, however, have the right to opt for Turkish nationality within two years from the coming into force of the present treaty, provided that they leave Cyprus within twelve months after having so opted.

Turkish nationals ordinarily resident in Cyprus on the coming into force of the present treaty who, at that date, have acquired or are in process of acquiring British nationality, in consequence of a request made in accordance with the local law, will also thereupon lose their Turkish nationality.

It is understood that the Government of Cyprus will be entitled to refuse British nationality to inhabitants of the island who, being Turkish nationals, had formerly acquired another nationality without the consent of the Turkish Government.

ARTICLE 22

Without prejudice to the general stipulations of Article 27, Turkey hereby recognizes the definite abolition of all rights and privileges whatsoever.

which she enjoyed in Libya under the Treaty of Lausanne of the 18th October, 1912, and the instruments connected therewith.

2. SPECIAL PROVISIONS

ARTICLE 23

The high contracting parties are agreed to recognize and declare the principle of freedom of transit and of navigation, by sea and by air, in time of peace as in time of war, in the strait of the Dardanelles, the Sea of Marmora and the Bosphorus, as prescribed in the separate convention signed this day, regarding the régime of the Straits. This convention will have the same force and effect in so far as the present high contracting parties are concerned as if it formed part of the present treaty.

ARTICLE 24

The separate convention signed this day respecting the régime for the frontier described in Article 2 of the present treaty will have equal force and effect in so far as the present high contracting parties are concerned as if it formed part of the present treaty.

ARTICLE 25

Turkey undertakes to recognize the full force of the treaties of peace and additional conventions concluded by the other contracting Powers with the Powers who fought on the side of Turkey, and to recognize whatever disposition have been or may be made concerning the territories of the former German Empire, of Austria, of Hungary and of Bulgaria, and to recognize the new states within their frontiers as there laid down.

ARTICLE 26

Turkey hereby recognizes and accepts the frontiers of Germany, Austria, Bulgaria, Greece, Hungary, Poland, Roumania, the Serb-Croat-Slovene State and the Czechoslovak State, as these frontiers have been or may be determined by the treaties referred to in Article 25 or by any supplementary conventions.

ARTICLE 27

No power or jurisdiction in political, legislative or administrative matters shall be exercised outside Turkish territory by the Turkish Government or authorities, for any reason whatsoever, over the nationals of a territory placed under the sovereignty or protectorate of the other Powers signatory of the present treaty, or over the nationals of a territory detached from Turkey.

It is understood that the spiritual attributions of the Moslem religious authorities are in no way infringed.

ARTICLE 28

Each of the high contracting parties hereby accepts, in so far as it is concerned, the complete abolition of the capitulations in Turkey in every respect.

ARTICLE 29

Moroccans, who are French nationals (*ressortissants*) and Tunisians shall enjoy in Turkey the same treatment in all respects as other French nationals (*ressortissants*).

Natives (*ressortissants*) of Libya shall enjoy in Turkey the same treatment in all respects as other Italian nationals (*ressortissants*).

The stipulations of the present article in no way prejudice the nationality of persons of Tunisian, Libyan and Moroccan origin established in Turkey.

Reciprocally, in the territories the inhabitants of which benefit by the stipulations of the first and second paragraphs of this article, Turkish nationals shall benefit by the same treatment as in France and in Italy respectively.

The treatment to which merchandise originating in or destined for the territories, the inhabitants of which benefit from the stipulations of the first paragraph of this article, shall be subject in Turkey, and, reciprocally, the treatment to which merchandise originating in or destined for Turkey shall be subject in the said territories shall be settled by agreement between the French and Turkish Governments.

SECTION II.—NATIONALITY

ARTICLE 30

Turkish subjects habitually resident in territory which in accordance with the provisions of the present treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the state to which such territory is transferred.

ARTICLE 31

Persons over eighteen years of age, losing their Turkish nationality and obtaining *ipso facto* a new nationality under Article 30, shall be entitled within a period of two years from the coming into force of the present treaty to opt for Turkish nationality.

ARTICLE 32

Persons over eighteen years of age, habitually resident in territory detached from Turkey in accordance with the present treaty, and differing in race from the majority of the population of such territory shall, within two years from the coming into force of the present treaty, be entitled to opt for the nationality of one of the states in which the majority of the population is of the same race as the person exercising the right to opt, subject to the consent of that state.

ARTICLE 33

Persons who have exercised the right to opt in accordance with the provisions of Articles 31 and 32 must, within the succeeding twelve months, transfer their place of residence to the state for which they have opted:

They will be entitled to retain their immovable property in the territory of the other state where they had their place of residence before exercising their right to opt.

They may carry with them their movable property of every description. No export or import duties may be imposed upon them in connection with the removal of such property.

ARTICLE 34

Subject to any agreements which it may be necessary to conclude between the governments exercising authority in the countries detached from Turkey and the governments of the countries where the persons concerned are resident, Turkish nationals of over eighteen years of age who are natives of a territory detached from Turkey under the present treaty, and who on its coming into force are habitually resident abroad, may opt for the nationality of the territory of which they are natives, if they belong by race to the majority of the population of that territory, and subject to the consent of the government exercising authority therein. This right of option must be exercised within two years from the coming into force of the present treaty.

ARTICLE 35

The contracting powers undertake to put no hindrance in the way of the exercise of the right which the persons concerned have under the present treaty, or under the treaties of peace concluded with Germany, Austria, Bulgaria or Hungary, or under any treaty concluded by the said Powers, other than Turkey, or any of them, with Russia, or between themselves, to choose any other nationality which may be open to them.

ARTICLE 36

For the purposes of the provisions of this section, the status of a married woman will be governed by that of her husband, and the status of children under eighteen years of age by that of their parents.

SECTION III.—PROTECTION OF MINORITIES

ARTICLE 37

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

ARTICLE 38

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defense, or for the maintenance of public order.

ARTICLE 39

Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honors, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the courts.

ARTICLE 40

Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

ARTICLE 41

As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent

the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the state, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.

ARTICLE 42

The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by special commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorization will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

ARTICLE 43

Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

ARTICLE 44

Turkey agrees that, in so far as the preceding articles of this section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority

of the Council of the League of Nations. The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Turkish Government and any one of the other signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

ARTICLE 45

The rights conferred by the provisions of the present section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.

PART II.—FINANCIAL CLAUSES

SECTION I.—OTTOMAN PUBLIC DEBT

ARTICLE 46

The Ottoman Public Debt, as defined in the table annexed to the present section, shall be distributed under the conditions laid down in the present section between Turkey, the states in favor of which territory has been detached from the Ottoman Empire after the Balkan wars of 1912-13, the states to which the islands referred to in Articles 12 and 15 of the present treaty and the territory referred to in the last paragraph of the present article have been attributed, and the states newly created in territories in Asia which are detached from the Ottoman Empire under the present treaty. All the above states shall also participate, under the conditions laid down in the present section, in the annual charges for the service of the Ottoman Public Debt from the dates referred to in Article 53.

From the dates laid down in Article 53, Turkey shall not be held in any way whatsoever responsible for the shares of the debt for which other states are liable.

For the purpose of the distribution of the Ottoman Public Debt, that portion of the territory of Thrace which was under Turkish sovereignty on the 1st August, 1914, and lies outside the boundaries of Turkey as laid down by Article 2 of the present treaty, shall be deemed to be detached from the Ottoman Empire under the said treaty.

ARTICLE 47

The Council of the Ottoman Public Debt shall, within three months from the coming into force of the present treaty, determine, on the basis laid down by Articles 50 and 51, the amounts of the annuities for the loans referred to in Part A of the table annexed to the present section which are payable by each of the states concerned, and shall notify to them this amount.

These states shall be granted an opportunity to send to Constantinople delegates to check the calculations made for this purpose by the Council of the Ottoman Public Debt.

The Council of the Debt shall exercise the functions referred to in Article 134 of the Treaty of Peace with Bulgaria of the 27th November, 1919.

Any disputes which may arise between the parties concerned as to the application of the principles laid down in the present article shall be referred, not more than one month after the notification referred to in the first paragraph, to an arbitrator whom the Council of the League of Nations will be asked to appoint; this arbitrator shall give his decision within a period of not more than three months. The remuneration of the arbitrator shall be determined by the Council of the League of Nations, and shall, together with the other expenses of the arbitration, be borne by the parties concerned. The decisions of the arbitrator shall be final. The payment of the annuities shall not be suspended by the reference of any disputes to the above-mentioned arbitrator.

ARTICLE 48

The states, other than Turkey, among which the Ottoman Public Debt, as defined in Part A of the table annexed to this section, is attributed shall within three months from the date on which they are notified, in accordance with Article 47, of their respective shares in the annual charges referred to in that article, assign to the Council of the Debt adequate security for the payment of their share. If such security is not assigned within the above-mentioned period, or in the case of any disagreement as to the adequacy of the security assigned, any of the governments signatory to the present treaty shall be entitled to appeal to the Council of the League of Nations.

The Council of the League of Nations shall be empowered to entrust the collection of the revenues assigned as security to international financial organizations existing in the countries (other than Turkey) among which the debt is distributed. The decisions of the Council of the League of Nations shall be final.

ARTICLE 49

Within one month from the date of the final determination under Article 47 of the amount of the annuities for which each of the states concerned is liable, a commission shall meet in Paris to determine the method of carrying out the distribution of the nominal capital of the Ottoman Public Debt as defined in Part A of the table annexed to this section. This distribution shall be made in accordance with the proportions adopted for the division of the annuities, and account shall be taken of the terms of the agreements governing the loans and of the provisions of this section.

The commission referred to in the first paragraph shall consist of a representative of the Turkish Government, a representative of the council of the Ottoman Public Debt, a representative of the debt other than the Unified Debt and the Lots Turcs; each of the governments concerned shall also be entitled to appoint a representative. All questions in regard to which the commission may be unable to reach agreement shall be referred to the arbitrator referred to in the fourth paragraph of Article 47.

If Turkey shall decide to create new securities in respect of her share, the distribution of the capital of the Ottoman Public Debt shall be made in the first instance as it affects Turkey by a committee consisting of the representative of the Council of the Ottoman Public Debt and the representative of the debt other than the Unified Debt and the Lots Turcs. The new securities shall be delivered to the commission, which shall ensure their delivery to the bondholders upon such terms as will provide for the release of Turkey from liability and the rights of the bondholders towards the other states which are liable for a share of the Ottoman Public Debt. The securities issued in respect of the share of each state in the Ottoman Public Debt shall be exempt in the territory of the high contracting parties from all stamp duties or other taxes which would be involved by such issue.

The payment of the annuities for which each of the states concerned is liable shall not be postponed as a consequence of the provisions of the present article in regard to the distribution of the nominal capital.

ARTICLE 50

The distribution of the annual charges referred to in Article 47 and of the nominal capital of the Ottoman Public Debt mentioned in Article 49 shall be effected in the following manner:

(1) The loans prior to the 17th October, 1912, and the annuities of such loans shall be distributed between the Ottoman Empire as it existed after the Balkan wars of 1912-13, the Balkan states in favor of which territory was detached from the Ottoman Empire after those wars, and the states to which the islands referred to in Articles 12 and 15 of the present treaty have been attributed; account shall be taken of the territorial changes which have taken place after the coming into force of the treaties which ended those wars or subsequent treaties.

(2) The residue of the loans for which the Ottoman Empire remained liable after this first distribution and the residue of the annuities of such loans, together with the loans contracted by that Empire between the 17th October, 1912, and the 1st November, 1914, and the annuities of such loans shall be distributed between Turkey, the newly created states in Asia in favor of which a territory has been detached from the Ottoman Empire under the present treaty, and the state to which the territory referred to in the last paragraph of Article 46 of the said treaty has been attributed.

The distribution of the capital shall in the case of each loan be based on the capital amount outstanding at the date of the coming into force of the present treaty.

ARTICLE 51

The amount of the share in the annual charges of the Ottoman Public Debt for which each state concerned is liable in consequence of the distribution provided for by Article 50 shall be determined as follows:

(1) As regards the distribution provided for by Article 50 (1), in the first place the share of the islands referred to in Articles 12 and 15 and of the territories detached from the Ottoman Empire after the Balkan wars, taken together, shall be fixed. The amount of this share shall bear the same proportion to the total sum of the annuities to be distributed in accordance with Article 50 (1) as the average total revenue of the above-mentioned islands and territories, taken as a whole, bore to the average total revenue of the Ottoman Empire in the financial years 1910-1911 and 1911-1912, including the proceeds of the customs surtaxes established in 1907.

The amount thus determined shall then be distributed among the states to which the territories referred to in the preceding paragraph have been attributed, and the share for which each of these states will thus be made liable shall bear the same proportion to the total amount so distributed as the average total revenue of the territory attributed to each state bore in the financial years 1910-11 and 1911-12 to the average total revenue of the territories detached from the Ottoman Empire after the Balkan Wars and the islands referred to in Articles 12 and 15. In calculating the revenues referred to in this paragraph, customs revenues shall be excluded.

(2) As regards the territories detached from the Ottoman Empire under the present treaty (including the territory referred to in the last paragraph of Article 46), the amount of the share of each state concerned shall bear the same proportion to the total sum of the annuities to be distributed in accordance with Article 50 (2) as the average total revenue of the detached territory (including the proceeds of the customs surtax established in 1907) for the financial years 1910-11 and 1911-12 bore to the average total revenue of the Ottoman Empire, excluding the territories and islands referred to in paragraph (1) of this article.

ARTICLE 52

The advances referred to in Part B of the table annexed to the present section shall be distributed between Turkey and the other states referred to in Article 46 under the following conditions:

(1) As regards the advances referred to in the table which existed on the 17th October, 1912, the capital amount, if any, outstanding at the date of the coming into force of the present treaty, together with the interest from the dates mentioned in the first paragraph of Article 53 and the repayments made since those dates, shall be distributed in accordance with the provisions of Article 50 (1) and Article 51 (1).

(2) As regards the amounts for which the Ottoman Empire remains liable after the first distribution and the advances referred to in the table which were contracted by the said Empire between the 17th October, 1912, and the 1st November, 1914, the capital amount, if any, outstanding at the date of the coming into force of the present treaty, together with the interest from the 1st March, 1920, and the repayments made since that date, shall be distributed in accordance with the provisions of Article 50 (2) and Article 51 (2).

The Council of the Ottoman Public Debt shall, within three months from the coming into force of the present treaty, determine the amount of the share in these advances for which each of the states concerned is liable, and notify them of such amount.

The sums for which states other than Turkey are liable shall be paid by those states to the Council of the Debt and shall be paid by the Council to the creditors, or credited to the Turkish Government up to the amount paid by Turkey, by way of interest or repayment, for the account of those states.

The payments referred to in the preceding paragraph shall be made by five equal annuities from the coming into force of the present treaty. Such portion of these payments as is payable to the creditors of the Ottoman Empire shall bear interest at the rates laid down in the contracts governing the advances; the portion to be credited to the Turkish Government shall be paid without interest.

ARTICLE 53

The annuities for the service of the loans of the Ottoman Public Debt (as defined in Part A of the table annexed to this section) due by the states in favor of which a territory has been detached from the Ottoman Empire after the Balkan wars, shall be payable as from the coming into force of the treaties by which the respective territories were transferred to those states. In the case of the islands referred to in Article 12, the annuity shall be payable as from the 1st/14th November, 1913, and, in the case of the islands referred to in Article 15, as from the 17th October, 1912.

The annuities due by the states newly created in territories in Asia detached from the Ottoman Empire under the present treaty, and by the state

ANNEX I TO SECTION I

TABLE OF THE OTTOMAN PRE-WAR PUBLIC DEBT (NOVEMBER 1, 1914).

Part A

Loan 1	Date of Contract 2	Interest 3	Date of Redemption 4	Bank of Issue 5
Unified Debt.....	1-14.9.1903- 8-21.6.1906	% 4		
Lots turcs.....	5.1.1870	...		
Osmanié.....	18-30.4.1890	4	1931	Imperial Ottoman Bank.
Tombac priority.....	26.4-8.5.1893	4	1954	Imperial Ottoman Bank.
40,000,000 fr. (Oriental Railways).....	1-13.3.1894	4	1957	Deutsche Bank and its group, including Inter- national Bank and two French banks.
5%, 1896.....	29.2-12.3.1896	5	1946	Imperial Ottoman Bank.
Customs, 1902.....	17-29.5.1886- 28.9-11.10.1902	4	1958	Imperial Ottoman Bank.
4%, 1903 (Fisheries)...	3.10.1888-21.2- 6.3.1903	4	1958	Deutsche Bank.
Bagdad, Series I.....	20.2-5.3.1903	4	2001	Deutsche Bank.
4%, 1904.....	4-17.9.1903	4	1960	Imperial Ottoman Bank.
4%, 1901-1905.....	21.11-4.12.1901- 6.11.1903-25.4 8.5.1905	4	1961	Imperial Ottoman Bank.
Tedjhzat-Askérié.....	4-17.4.1905	4	1961	Deutsche Bank.
Bagdad, Series II.....	20.5-2.6.1908	4	2006	Deutsche Bank.
Bagdad, Series III.....	20.5-2.6.1908	4	2010	Deutsche Bank.
4%, 1908.....	6-19.9.1903	4	1965	Imperial Ottoman Bank.
4%, 1909.....	30.9-13.10.1909	4	1950	Imperial Ottoman Bank.
Soma-Panderma.....	20.11-3.12.1910	4	1992	Imperial Ottoman Bank.
Hodeida-Sansaa.....	24.2-9.3.1911	4	2006	Banque française.
Customs, 1911.....	27.10-9.11.1910	4	1952	Deutsche Bank, and its group.
Plain of Koniah irriga- tion.....	5-18.11.1913	...	1932	
Docks, arsenals and na- val constructions....	19.11-2.12.1913	5½	1943	
5%, 1914.....	13-26.4.1914	5	(1962)	Imperial Ottoman Bank.
Avance Régie des Ta- bacs.....	4.8.1913	...		
Treasury Bills, 5%, 1911 (purchase of warships)	13.7.1911	5	1916 ⁴	National Bank of Turkey.
Treasury Bills, Imperial Ottoman Bank, 1912.	8-21.11.1912	6	1915 ⁴	Imperial Ottoman Bank.
Treasury Bills, 1913 (in- cluding the bills issued directly).....	19.1-1.2.1913	5	1918 ⁴	Périer and Co.

⁴ See Article 54

Part B

Advance	Date of Contract	Interest	Original Nominal Capital £ T
Bagdad Railway Company.....	3/16 June, 1908	7%	300,000
Lighthouse Administration.....	5/18 August, 1904	8	55,000
Lighthouse Administration.....	5/18 July, 1907	7	300,000
Constanza Cable Company.....	27/9 October, 1904	4	17,335
Tunnel Company.....		...	3,000
Orphan's Fund.....	Various dates	...	153,147
Deutsche Bank.....	13/26 August, 1912	5.5	33,000
Lighthouse Administration.....	3/16 April, 1913	7	500,000
Anatolia Railway Company.....	23/5 March, 1914	6	200,000

to which the territory referred to in the last paragraph of Article 46 has been attributed, shall be payable as from the 1st March, 1920.

ARTICLE 54

The treasury bills of 1911, 1912 and 1913 included in Part A of the table annexed to this section shall be repaid, with interest at the agreed rate, within ten years from the dates fixed by the contracts.

ARTICLE 55

The states referred to in Article 46, including Turkey, shall pay to the Ottoman Debt Council the amount of the annuities required for the service of their share of the Ottoman Public Debt (as defined in Part A of the table annexed to this section) to the extent that such annuities have remained unpaid as from the dates laid down by Article 53. This payment shall be made, without interest, by means of twenty equal annuities from the coming into force of the present treaty.

The amount of the annuities paid to the Council of the Debt by the states other than Turkey shall, to the extent that they represent payments made by Turkey for the account of those states, be credited to Turkey on account of the arrears with which she is debited.

ARTICLE 56

The Council of the Administration of the Ottoman Public Debt shall no longer include delegates of the German, Austrian and Hungarian bondholders.

ARTICLE 57

Limits of time fixed for the presentation of coupons of or claims for interest upon the loans and advances of the Ottoman Public Debt and the Turkish loans of 1855, 1891 and 1894, and on the Egyptian tribute, and the limits

of time fixed for the presentation of securities of these loans drawn for repayment, shall, on the territory of the high contracting parties, be considered as having been suspended from the 29th October, 1914, until three months after the coming into force of the present treaty.

SECTION II.—MISCELLANEOUS CLAUSES

ARTICLE 58

Turkey, on the one hand, and the other contracting Powers (except Greece) on the other hand, reciprocally renounce all pecuniary claims for the loss and damage suffered respectively by Turkey and the said Powers and by their nationals (including juridical persons) between the 1st August, 1914, and the coming into force of the present treaty, as the result of acts of war, or measures of requisition, sequestration, disposal or confiscation.

Nevertheless, the above provisions are without prejudice to the provisions of Part III (Economic Clauses) of the present treaty.

Turkey renounces in favor of the other contracting parties (except Greece) any right in the sums in gold transferred by Germany and Austria under Article 259 (1) of the treaty of peace of the 28th June, 1919, with Germany, and under Article 210 (1) of the treaty of peace of the 10th September, 1919, with Austria.

The Council of the Administration of the Ottoman Public Debt is freed from all liability to make the payments which it was required to make by the agreement of the 20th June, 1331 (3rd July, 1915) relating to the first issue of Turkish currency notes or by the words inscribed on the back of such notes.

Turkey also agrees not to claim from the British Government or its nationals the repayment of the sums paid for the warships ordered in England by the Ottoman Government which were requisitioned by the British Government in 1914, and renounces all claims in the matter.

ARTICLE 59

Greece recognizes her obligation to make reparation for the damage caused in Anatolia by the acts of the Greek army or administration which were contrary to the laws of war.

On the other hand, Turkey, in consideration of the financial situation of Greece resulting from the prolongation of the war and from its consequences, finally renounces all claims for reparation against the Greek Government.

ARTICLE 60

The states in favor of which territory was or is detached from the Ottoman Empire after the Balkan wars or by the present treaty shall acquire, without payment, all the property and possessions of the Ottoman Empire situated therein.

It is understood that the property and possessions of which the transfer from the civil list to the state was laid down by the Iradés of the 26th August, 1324 (8th September, 1908) and the 20th April, 1325 (2nd May, 1909), and also those which, on the 30th October, 1918, were administered by the civil list for the benefit of a public service, are included among the property and possessions referred to in the preceding paragraph, the aforesaid states being subrogated to the Ottoman Empire in regard to the property and possessions in question. The Wakfs created on such property shall be maintained.

The dispute which has arisen between the Greek and Turkish Governments relating to property and possessions which have passed from the civil list to the state and are situated in territories of the former Ottoman Empire transferred to Greece either after the Balkan wars, or subsequently, shall be referred to an arbitral tribunal at The Hague, in accordance with the special protocol No. 2 annexed to the Treaty of Athens of the 1st-12th November, 1913. The terms of reference shall be settled between the two Governments.

The provisions of this article will not modify the juridical nature of the property and possessions registered in the name of the civil list or administered by it, which are not referred to in the second and third paragraphs above.

ARTICLE 61

The recipients of Turkish civil and military pensions who acquire under the present treaty the nationality of a state other than Turkey, shall have no claim against the Turkish Government in respect of their pensions.

ARTICLE 62

Turkey recognizes the transfer of any claims to payment or repayment which Germany, Austria, Bulgaria or Hungary may have against her, in accordance with Article 261 of the treaty of peace concluded at Versailles on the 28th June, 1919, with Germany, and the corresponding articles of the treaties of peace of the 10th September, 1919, with Austria; of the 27th November, 1919, with Bulgaria; and of the 4th June, 1920, with Hungary.

The other contracting Powers agree to release Turkey from the debts for which she is liable on this account.

The claims which Turkey has against Germany, Austria, Bulgaria and Hungary, are also transferred to the aforesaid contracting Powers.

ARTICLE 63

The Turkish Government, in agreement with the other contracting Powers, hereby releases the German Government from the obligation incurred by it during the war to accept Turkish Government currency notes at a specified rate of exchange in payment for goods to be exported to Turkey from Germany after the war.

PART III.—ECONOMIC CLAUSES

ARTICLE 64

In this part, the expression "Allied Powers" means the contracting Powers other than Turkey.

The term "Allied nationals" includes physical persons, companies and associations of the contracting Powers other than Turkey, or of a state or territory under the protection of one of the said Powers.

The provisions of this part relating to "Allied nationals" shall benefit persons who without having the nationality of one of the Allied Powers, have, in consequence of the protection which they in fact enjoyed at the hands of these Powers, received from the Ottoman authorities the same treatment as Allied nationals and have, on this account, been prejudiced.

SECTION I.—PROPERTY, RIGHTS AND INTERESTS

ARTICLE 65

Property, rights and interests which still exist and can be identified in territories remaining Turkish at the date of the coming into force of the present treaty, and which belong to persons who on the 29th October, 1914, were Allied nationals, shall be immediately restored to the owners in their existing state.

Reciprocally, property, rights and interests which still exist and can be identified in territories subject to the sovereignty or protectorate of the Allied Powers on the 29th October, 1914, or in territories detached from the Ottoman Empire after the Balkan wars and subject today to the sovereignty of any such Power, and which belong to Turkish nationals, shall be immediately restored to the owners in their existing state. The same provision shall apply to property, rights and interests which belong to Turkish nationals in territories detached from the Ottoman Empire under the present treaty, and which may have been subjected to liquidation or any other exceptional measure whatever on the part of the authorities of the Allied Powers.

All property, rights and interests situated in territory detached from the Ottoman Empire under the present treaty, which, after having been subjected by the Ottoman Government to an exceptional war measure, are now in the hands of the contracting Power exercising authority over the said territory, and which can be identified, shall be restored to their legitimate owners, in their existing state. The same provision shall apply to immovable property which may have been liquidated by the contracting Power exercising authority over the said territory. All other claims between individuals shall be submitted to the competent local courts.

All disputes relating to the identity or the restitution of property to which a claim is made shall be submitted to the mixed arbitral tribunal provided for in Section V of this part.

ARTICLE 66

In order to give effect to the provisions of the first and second paragraphs of Article 65 the high contracting parties will, by the most rapid procedure, restore the owners to the possession of their property, rights and interests free from any burdens or encumbrances with which such property, rights and interests may have been charged without the consent of the said owners. It will be the duty of the government of the Power effecting the restitution to provide for the compensation of third parties who may have acquired the property directly or indirectly from the said government and who may be injured by this restitution. Disputes which may arise in connection with such compensation shall be dealt with by the ordinary courts.

In all other cases it will be open to any third parties who may be injured to take action against whoever is responsible, in order to obtain compensation.

In order to give effect to these provisions all acts of transfer or other exceptional war measures, which the high contracting parties may have carried out in respect of enemy property, rights and interests, shall be immediately cancelled and stayed when liquidation has not yet been completed. Owners who make claims shall be satisfied by the immediate restitution of their property, rights and interests as soon as these shall have been identified.

When at the date of the signature of the present treaty the property, rights and interests the restitution of which is provided for in Article 65 have been liquidated by the authorities of one of the high contracting parties, that party shall be discharged from the obligation to restore the said property, rights and interests by payment of the proceeds of the liquidation to the owner. If, on application being made by the owner, the mixed arbitral tribunal provided for by Section V finds that the liquidation was not effected in such conditions as to ensure the realization of a fair price, it will have the power, in default of agreement between the parties, to order the addition to the proceeds of the liquidation of such amount as it shall consider equitable. The said property, rights and interests shall be restored if the payment is not made within two months from the agreement with the owner or from the decision of the mixed arbitral tribunal mentioned above.

ARTICLE 67

Greece, Roumania and the Serb-Croat-Slovene State on the one hand, and Turkey on the other hand undertake mutually to facilitate both by appropriate administrative measures and by the delivery of all documents relating thereto the search on their territory for, and the restitution of, movable property of every kind taken away, seized or sequestered by their armies or administrations in the territory of Turkey, or in the territory of Greece, Roumania or the Serb-Croat-Slovene State respectively, which are actually within the territories in question.

Such search and restitution will take place also as regards property of the nature referred to above seized or sequestered by German, Austro-Hungarian or Bulgarian armies or administrations in the territory of Greece, Roumania or the Serb-Croat-Slovene State, which has been assigned to Turkey or to her nationals, as well as to property seized or sequestered by the Greek, Roumanian or Serbian armies in Turkish territory, which has been assigned to Greece, Roumania or the Serb-Croat-Slovene State or to their nationals.

Applications relating to such search and restitution must be made within six months from the coming into force of the present treaty.

ARTICLE 68

Debts arising out of contracts concluded, in districts in Turkey occupied by the Greek army, between the Greek authorities and administrations on the one hand and Turkish nationals on the other, shall be paid by the Greek Government in accordance with the provisions of the said contracts.

ARTICLE 69

No charge, tax or surtax to which, by virtue of the privileges which they enjoyed on the 1st August, 1914, Allied nationals and their property were not subject, shall be collected from Allied subjects or their property in respect of the financial years earlier than the financial year 1922-23.

If any sums have been collected after the 15th May, 1923, in respect of financial years earlier than the financial year 1922-1923, the amount shall be refunded to the persons concerned, as soon as the present treaty comes into force.

No claim for repayment shall be made as regards sums encashed before the 15th May, 1923.

ARTICLE 70

Claims based on Articles 65, 66 and 69 must be lodged with the competent authorities within six months, and, in default of agreement, with the mixed arbitral tribunal within twelve months, from the coming into force of the present treaty.

ARTICLE 71

The British Empire, France, Italy, Roumania and the Serb-Croat-Slovene State or their nationals having begun claims or suits with regard to their property, rights and interests against the Ottoman Government before the 29th October, 1914, the provisions of this section will not prejudice such claims or suits. Claims or suits begun against the British, French, Italian, Roumanian or Serb-Croat-Slovene Governments by the Ottoman Government or its nationals will similarly not be prejudiced. These claims or suits will be continued against the Turkish Government and against the other

governments mentioned in this article under the conditions existing before the 29th October, 1914, due regard being had to the abolition of the capitulations.

ARTICLE 72

In the territories which remain Turkish by virtue of the present treaty, property, rights and interests belonging to Germany, Austria, Hungary and Bulgaria or to their nationals, which before the coming into force of the present treaty have been seized or occupied by the Allied Governments, shall remain in the possession of these governments until the conclusion of arrangements between them and the German, Austrian, Hungarian and Bulgarian Governments or their nationals who are concerned. If the above-mentioned property, rights and interests have been liquidated, such liquidation is confirmed.

In the territories detached from Turkey under the present treaty, the governments exercising authority there shall have power, within one year from the coming into force of the present treaty, to liquidate the property, rights and interests belonging to Germany, Austria, Hungary and Bulgaria or to their nationals.

The proceeds of liquidations, whether they have already been carried out or not, shall be paid to the Reparation Commission established by the treaty of peace concluded with the states concerned, if the property liquidated belongs to the German, Austrian, Hungarian or Bulgarian State. In the case of liquidation of private property, the proceeds of liquidation shall be paid to the owners direct.

The provisions of this article do not apply to Ottoman limited companies.

The Turkish Government shall be in no way responsible for the measures referred to in the present article.

SECTION II.—CONTRACTS AND PRESCRIPTIONS

ARTICLE 73

The following classes of contracts concluded, before the date mentioned in Article 82, between persons who thereafter became enemies as defined in that article, remain in force subject to the provisions of the contracts and to the stipulations of the present treaty:

(a) Contracts for the sale of real property, even if all formalities may not have been concluded, provided that delivery did in fact take place before the date on which the parties became enemies as defined in Article 82.

(b) Leases and agreements for leases of land and houses entered into between individuals.

(c) Contracts between individuals regarding the exploitation of mines, forests or agricultural estates.

(d) Contracts of mortgage, pledge or lien.

(e) Contracts constituting companies, excepting *sociétés en nom collectif* which do not constitute, under the law to which they are subject, an entity separate from that of the persons of which they are composed (partnerships).

(f) Contracts, whatever may be their purpose, concluded between individuals or companies and the state, provinces, municipalities or other similar juridical persons charged with administrative functions.

(g) Contracts relating to family status.

(h) Contracts relating to gifts or bounties of any kind whatever.

This article cannot be invoked in order to give to contracts a validity different from that which they had in themselves when they were concluded.

It does not apply to concessionary contracts.

ARTICLE 74

Insurance contracts governed by the provisions of the annex to this section.

ARTICLE 75

Contracts other than those specified in Articles 73 and 74 and other than concessionary contracts, which were entered into between persons who subsequently became enemies, shall be considered as having been annulled as from the date on which the parties became enemies.

Nevertheless, either of the parties to the contract shall have power, within three months from the coming into force of the present treaty, to require the execution of the contract, on condition of paying, where the circumstances demand it, to the other party compensation calculated according to the difference between the conditions prevailing at the time when the contract was concluded and those prevailing at the time when its maintenance is required. In default of agreement between the parties, this compensation shall be fixed by the mixed arbitral tribunal.

ARTICLE 76

The validity of all compromises entered into before the coming into force of the present treaty between nationals of the contracting Powers, parties to contracts specified in Articles 73 to 75, particularly those providing for the cancellation, the maintenance, the methods of execution, or the modification of such contracts, including agreements relating to the currency of payment or the rate of exchange, is confirmed.

ARTICLE 77

Contracts between Allied and Turkish nationals concluded after the 30th October, 1918, remain in force and will be governed by the ordinary law.

Contracts duly concluded with the Constantinople Government between the 30th October, 1918, and the 16th March, 1920, also remain in force and will be governed by the ordinary law.

All contracts and arrangements duly concluded after the 16th March, 1920, with the Constantinople Government concerning territories which remained under the effective control of the said government, shall be submitted to the Grand National Assembly of Turkey for approval, if the parties concerned make application within three months from the coming into force of the present treaty. Payments made under such contracts shall be duly credited to the party who has made them.

If approval is not granted, the party concerned shall, if the circumstances demand it, be entitled to compensation corresponding to the direct loss which has been actually suffered; such compensation in default of an amicable agreement, shall be fixed by the mixed arbitral tribunal.

The provisions of this article are not applicable either to concessionary contracts or to transfers of concessions.

ARTICLE 78

All disputes which already exist, or may arise within the period of six months mentioned below, relating to contracts, other than concessionary contracts, between parties who subsequently became enemies, shall be determined by the mixed arbitral tribunal, with the exception of disputes which, in accordance with the laws of neutral Powers are within the competence of the national courts of those Powers. In the latter case, such disputes shall be determined by the said national courts, to the exclusion of the mixed arbitral tribunal. Applications relating to disputes which, under this article, are within the competence of the mixed arbitral tribunal, must be presented to the said tribunal within a period of six months from the date of its establishment.

After the expiration of this period, disputes which have not been submitted to the mixed arbitral tribunal shall be determined by the competent courts in accordance with the ordinary law.

The provisions of this article do not apply to cases in which all the parties to the contract resided in the same country during the war and there freely disposed of their persons and their property, nor to disputes in respect of which judgment was given by a competent court before the date on which the parties became enemies.

ARTICLE 79

All periods whatever of prescription or limitation of right of action, whether they began to run before or after the outbreak of war, shall be treated, in the territory of the high contracting parties so far as regards relations between enemies, as having been suspended from the 29th October, 1914, until the expiration of three months after the coming into force of the present treaty.

This provision applies, in particular, to periods of time allowed for the presentation of interest or dividend coupons, or for the presentation for pay-

ment of securities drawn for redemption or repayable on any other ground.

As regards Roumania, the above-mentioned periods shall be considered as having been suspended as from the 27th August, 1916.

ARTICLE 80

As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

When the period within which a negotiable instrument should have been presented for acceptance or payment, or within which notice of non-acceptance or non-payment should have been given to the drawers or endorsers, or within which the instrument should have been protested, has expired during the war, and when the party who should have presented or protested the instrument or given notice of non-acceptance or non-payment, has failed to do so during the war, a period of three months from the coming into force of the present treaty shall be allowed within which the presentation, notice of non-acceptance or non-payment, or protest may be made.

ARTICLE 81

Sales effected during the war in order to realize pledges or mortgages created before the war as security for debts which have become payable, shall be deemed valid, although it may not have been possible to perform all the formalities required for notifying the debtor, subject to the express right of the said debtor to summon the creditor before the mixed arbitral tribunal to render accounts, failing which the creditor will be liable to be cast in damages.

It shall be the duty of the mixed arbitral tribunal to settle the accounts between the parties, to investigate the conditions under which the property pledged or mortgaged was sold, and to order the creditor to make good any loss suffered by the debtor as a result of the sale if the creditor acted in bad faith or if he did not take all steps in his power to avoid having recourse to a sale or to cause the sale to be conducted in such conditions as to ensure the realization of a fair price.

The present provision is applicable only between enemies and does not extend to transactions referred to above which may have been carried out after the 1st May, 1923.

ARTICLE 82

For the purposes of the present section, the parties to a contract shall be regarded as enemies from the date on which trading between them became impossible in fact or was prohibited or became unlawful under laws, orders or regulations to which one of the parties was subject.

By way of exception to Articles 73-75, 79 and 80, contracts shall be governed by the ordinary law if they were concluded within the territory of one of the high contracting parties between enemies (including companies) or their agents, if this territory was an enemy country for one of the contracting parties who remained there during the war and was there able to dispose freely of his person and property.

ARTICLE 83

The provisions of this section do not apply between Japan and Turkey; matters dealt with in this section shall, in both of these countries, be determined in accordance with the local law.

ANNEX

I. LIFE ASSURANCE

Paragraph 1

Life assurance contracts entered into between an insurer and a person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war or by the fact of the person becoming an enemy.

Every sum which, during the war, became due upon a contract deemed not to have been dissolved in accordance with the preceding paragraph, shall be recoverable after the war. This sum shall be increased by interest at 5 per cent. per annum from the date of its becoming due up to the day of payment.

If the contract has lapsed during the war, owing to non-payment of premiums or has become void from breach of the conditions of the contract, the assured, or his representatives, or the persons entitled, shall have the right at any moment within twelve months from the coming into force of the present treaty to claim from the insurer the surrender value of the policy at the date of its lapse or annulation, together with interest at 5 per cent. per annum.

Turkish nationals whose life insurance contracts entered into before the 29th October, 1914, have been cancelled or reduced before the Treaty for non-payment of premiums in accordance with the provisions of the said contracts, shall have the right, within three months from the coming into force of the present treaty, if they are still alive, to restore their policies for the whole of the amount assured. For this purpose they must, after having undergone a medical examination by the doctor of the company, the result of which the company considers satisfactory, pay the premiums in arrear with compound interest at 5 per cent.

Paragraph 2

It is understood that life assurance contracts in money other than the Turkish pound, entered into before the 29th October, 1914, between com-

panies possessing the nationality of an Allied Power and Turkish nationals, in respect of which the premiums have been paid before and after the 18th November, 1915, or even only before that date, shall be regulated, first, by determining the rights of the assured in accordance with the general conditions of the policy for the period before the 18th November, 1915, in the currency stipulated in the contract at the current rate in its country of origin (for example, every amount stipulated in francs, in gold francs, or in "francs effectifs" will be paid in French francs), secondly, for the period after the 18th November, 1915, in Turkish pounds paper—the Turkish pound being taken at the pre-war par value.

If Turkish nationals whose contracts were entered into in currency other than Turkish currency show that they have continued to pay their premiums since the 18th November, 1915, in the currency stipulated in the contracts, the said contracts shall be settled in the same currency at the current rate in its country of origin, even for the period after the 18th November, 1915.

Turkish nationals whose contracts, entered into before the 29th October, 1914, in currency other than Turkish currency with companies possessing the nationality of an Allied Power are, owing to payment of premiums, still in force, shall have the right within three months after the coming into force of the present Treaty to restore their policies for the full amount, in the currency stipulated in their contract, at the current rate in its country of origin. For this purpose they must pay in this currency the premiums which have become due since the 18th November, 1915. On the other hand, the premiums actually paid by them in Turkish pounds paper since that date will be repaid to them in the same currency.

Paragraph 3

As regards insurances in Turkish pounds, settlement shall be made in Turkish pounds paper.

Paragraph 4

The provisions of paragraphs 2 and 3 do not apply to policy holders who, by an express agreement, have already settled with the insurance companies the fixation of the value of their policies and the method of payment of their premiums, nor to those whose policies shall have been finally settled at the date of the coming into force of the present treaty.

Paragraph 5

For the purposes of the preceding paragraphs, insurance contracts shall be considered as contracts of life insurance when they depend on the probabilities of human life, combined with the rate of interest, for the calculation of the reciprocal engagement between the two parties.

II. MARINE INSURANCE

Paragraph 6

Subject to the provisions therein contained, contracts of marine insurance will not be deemed to have been dissolved where the risk had attached before the parties became enemies, but the policy shall not be deemed to cover losses due to belligerent action by the Power of which the insurer was a national or by the allies of that Power.

III. FIRE AND OTHER INSURANCES

Paragraph 7

Subject to the reserve contained in the preceding paragraph, fire insurance contracts and all other forms of insurance contracts are not deemed to be dissolved.

SECTION III.—DEBTS

ARTICLE 84

The high contracting parties are in agreement in recognizing that debts which were payable before the war or which became payable during the war under contracts entered into before the war, and which remained unpaid owing to the war, must be settled and paid, in accordance with the provisions of the contracts, in the currency agreed upon, at the rate current in its country of origin.

Without prejudice to the provisions of the annex to Section II of this part, it is agreed that where payments to be made under a pre-war contract are represented by sums collected during the war in whole or in part in a currency other than that mentioned in the said contract, such payments can be made by handing over the sums actually collected, in the currency in which they were collected. This provision shall not affect settlements inconsistent with the foregoing provisions arrived at by voluntary agreement between the parties before the coming into force of the present Treaty.

ARTICLE 85

The Ottoman Public Debt is by general agreement left outside the scope of this section and of the other sections of this part (Economic Clauses).

SECTION IV.—INDUSTRIAL, LITERARY AND ARTISTIC PROPERTY

ARTICLE 86

Subject to the stipulations of the present treaty, rights of industrial, literary and artistic property as they existed on the 1st August, 1914, in accordance with the law of each of the contracting countries, shall be re-established or restored as from the coming into force of the present treaty in the territories of the high contracting parties in favor of the persons entitled

to the benefit of them at the moment when the state of war commenced, or of their legal representatives. Equally, rights which, but for the war, could have been acquired during the war, by means of an application legally made for the protection of industrial property or of the publication of a literary or artistic work, shall be recognized and established in favor of those persons who would have been entitled thereto, from the coming into force of the present treaty.

Without prejudice to the rights which are required to be restored in accordance with the above provision, all acts (including the grant of licenses) done by virtue of the special measures taken during the war by a legislative, executive or administrative authority of an Allied Power in regard to the rights of Turkish nationals in respect of industrial, literary or artistic property, shall remain in force and continue to have their full effect. This provision applies *mutatis mutandis* to corresponding measures taken by Turkish authorities in regard to the rights of the nationals of any Allied Power.

ARTICLE 87

A minimum of one year from the coming into force of the present treaty shall be granted, without surtax or penalty of any kind, to Turkish nationals in the territory of each of the other contracting Powers, and to the nationals of these Powers in Turkey, within which they may accomplish any act, fulfil any formality, pay any fees, and generally satisfy any obligation prescribed by the laws and regulations of the respective states for preserving or obtaining or opposing the grant of rights to industrial property which had already been acquired on the 1st August, 1914, or which, but for the war, might have been acquired since that date by means of an application made before or during the war.

Rights to industrial property which have lapsed by reason of any failure to accomplish any act, fulfil any formality, or pay any fees shall be revived, but subject, in the case of patents and designs, to the adoption of such measures as each Power may deem reasonably necessary for the protection of the rights of third parties who have exploited or made use of patents or designs since they had lapsed.

The period from the 1st August, 1914, until the coming into force of the present treaty shall be excluded in calculating the time within which a patent has to be exploited or a trade-mark or design used, and it is further agreed that no patent, trade-mark or design in force on the 1st August, 1914, shall be subject to revocation or cancellation by reason only of the failure to exploit such patent or use such trade-mark or design, for two years after the coming into force of the present treaty.

ARTICLE 88

No action shall be brought and no claim made on the one hand by Turkish nationals or persons residing or carrying on business in Turkey, and on the

other hand by nationals of the Allied Powers or persons residing or carrying on their business in the territory of these Powers, nor by third parties having derived title during the war from such persons, by reason of any occurrence which has taken place within the territory of the other party, between the date of the beginning of a state of war and that of the coming into force of the present treaty, which might be held to constitute an infringement of rights of industrial property or rights of literary or artistic property either existing at any time during the war, or revived under the provisions of Article 86.

Among the occurrences referred to above are included the use by the governments of the high contracting parties, or by any person acting on their behalf, or with their consent, of rights of industrial, literary or artistic property, as well as the sale, the offering for sale or the use of products, apparatus, or any articles whatsoever to which these rights apply.

ARTICLE 89

Licences for the use of industrial property, or for the reproduction of literary or artistic works, granted before the war by or to nationals of the Allied Powers or persons residing in their territories or carrying on business therein, on the one hand, to or by Turkish nationals on the other hand, shall be considered as cancelled as from the date of the beginning of a state of war between Turkey and the Allied Power concerned. But in any case, the former beneficiary of a licence of this kind shall have the right within a period of six months from the coming into force of the present treaty to require from the proprietor of the rights the grant of a new licence, the conditions of which, in default of agreement between the parties, shall be fixed by the mixed arbitral tribunal referred to in Section V of this part. The tribunal shall have the power, where the circumstances demand it, to fix at the same time the amount which it considers fair payment for the use of the property during the war.

ARTICLE 90

The inhabitants of territories detached from Turkey under the present treaty shall, notwithstanding this transfer and the change of nationality consequent thereon, continue in complete enjoyment in Turkey of all the rights in industrial, literary and artistic property to which they were entitled under Ottoman law at the time of transfer.

Rights of industrial, literary and artistic property which are in existence in territories detached from Turkey under the present treaty at the time of separation, or which are re-established or restored by the provisions of Article 86, shall be recognized by the state to which the said territory is transferred, and shall remain in existence in that territory for the same period of time as that which they would have enjoyed under Ottoman law.

ARTICLE 91

All grants of patents and registrations of trade-marks, as well as all registrations of transfers or assignments of patents or trade-marks which have been duly made since the 30th October, 1918, by the Imperial Ottoman Government at Constantinople or elsewhere, shall be submitted to the Turkish Government and registered, if the parties concerned make an application within three months from the coming into force of the present treaty. Such registration shall have effect as from the date of the original registration.

SECTION V.—MIXED ARBITRAL TRIBUNAL

ARTICLE 92

Within three months from the date of the coming into force of the present treaty, a mixed arbitral tribunal shall be established between each of the Allied Powers, on the one hand, and Turkey, on the other hand.

Each of these tribunals shall be composed of three members, two being appointed respectively by each of the governments concerned, who shall be entitled to designate several persons from whom, according to the case in question, they will choose one to sit as a member of the tribunal. The president shall be chosen by agreement between the two governments concerned.

In case of failure to reach agreement within two months from the coming into force of the present treaty, the president shall be appointed, upon the request of one of the governments concerned, from among nationals of Powers which remained neutral during the war, by the President of the Permanent Court of International Justice at The Hague.

If within the said period of two months one of the governments concerned does not appoint a member to represent it on the tribunal, the Council of the League of Nations will have power to proceed to the appointment of such member upon the request of the other government concerned.

If a member of the tribunal should die or resign or for any reason become unable to perform his duties, he shall be replaced by the method laid down for his appointment, the above period of two months running from the date of death, resignation or inability as duly verified.

ARTICLE 93

The seat of the mixed arbitral tribunals shall be at Constantinople. If the number and character of the cases justify it, the governments concerned shall be entitled to create in each tribunal one or more additional sections, the seat of which shall be in whatever place may be convenient. Each of these sections shall be composed of a vice-president and two members appointed as laid down in the second, third, fourth and fifth paragraphs of Article 92.

Each government shall appoint one or more agents to represent it before the tribunal.

If, after three years from the establishment of a mixed arbitral tribunal, or of one of its sections, such tribunal or section has not finished its work, and if the Power on whose territory such tribunal or section has its seat so requests, the seat shall be removed from such territory.

ARTICLE 94

The mixed arbitral tribunals established pursuant to Articles 92 and 93 shall decide all questions within their competence under the present treaty.

Decisions shall be taken by a majority.

The high contracting parties agree to regard the decisions of the mixed arbitral tribunals as final and conclusive, and to render them binding upon their nationals, and to ensure their enforcement in their respective territories as soon as the decisions of the tribunals are notified to them, without it being necessary to have them declared executory.

The high contracting parties further undertake that their tribunals and authorities shall directly assist the mixed arbitral tribunals in every way that is in their power, particularly as regards the transmission of notices and the collection of evidence.

ARTICLE 95

The mixed arbitral tribunals shall be guided by justice, equity and good faith.

Each tribunal will determine the language to be used before it, and shall order such translations to be made as are necessary to ensure that the proceedings are completely understood; it will lay down rules and time limits for the procedure to be observed. These rules must be based on the following principles:—

1. The procedure shall include the presentation of a memorial and a counter-memorial respectively, with the option of presenting a reply and a rejoinder. If either of the parties asks for leave to present an oral argument he will be permitted to do so; in such case the other party will have the same right.

2. The tribunal shall have full power to order enquiries, the production of documents, and expert examinations; to make a view, to demand any information, to hear any witnesses and to ask the parties or their representatives for any verbal or written explanations.

3. Subject to any contrary provision in the present treaty, no claim shall be admitted after the expiry of a period of six months from the establishment of the tribunal, except upon express authority contained in a decision of the said tribunal and justified as an exceptional measure by considerations relating to distance or *force majeure*.

4. It shall be the duty of the tribunal to hold as many sittings each week

as may be needed for the prompt despatch of its business, except during vacations, which shall not exceed a total of eight weeks a year.

5. Judgment must always be given within at most two months from the end of the hearing, after which the tribunal will at once proceed to consider its judgment.

6. Oral arguments, if any, shall be heard in public, and in all cases judgment shall be delivered in public.

7. Each mixed arbitral tribunal shall be entitled to hold sittings elsewhere than in the place where its seat is established, if it considers it advantageous for the despatch of business.

ARTICLE 96

The governments concerned shall appoint by agreement a secretary-general for each tribunal, and shall each attach to him one or more secretaries. The secretary-general and the secretaries shall be under the orders of the tribunal, which with the consent of the governments concerned shall be entitled to engage any persons whose assistance it may need.

The secretariat of each tribunal shall have its offices at Constantinople. The governments concerned shall have power to establish additional offices in such other places as may be convenient.

Each tribunal shall keep in its secretariat the records, papers and documents relating to the cases submitted to it, and upon the completion of its duties it shall deposit them in the archives of the government of the country where its seat is established. These archives shall always be accessible to the governments concerned.

ARTICLE 97

Each government shall pay the emoluments of the member of the mixed arbitral tribunal whom it appoints, as well as those of any agent or secretary appointed by it.

The emoluments of the president and those of the secretary-general shall be fixed by agreement between the governments concerned, and these emoluments and the general expenses of the tribunal shall be paid in equal shares by the two governments.

ARTICLE 98

The present section shall not apply to cases between Japan and Turkey, which, according to the terms of the present treaty, would fall within the competence of the mixed arbitral tribunal. Such cases shall be settled by agreement between the two governments.

SECTION VI.—TREATIES

ARTICLE 99

From the coming into force of the present treaty and subject to the provisions thereof, the multilateral treaties, conventions and agreements of an

economic or technical character enumerated below shall enter again into force between Turkey and those of the other contracting Powers party thereto:—

1. Conventions of March 14, 1884, of December 1, 1886, and of March 23, 1887; and Final Protocol of July 7, 1887, regarding the protection of submarine cables;

2. Convention of July 5, 1890, regarding the publication of customs tariffs and the organization of an International Union for the publication of customs tariffs;

3. Arrangement of December 9, 1907, regarding the creation of the International Office of Public Hygiene at Paris;

4. Convention of June 7, 1905, regarding the creation of an International Agricultural Institute at Rome;

5. Convention of July 16, 1863, for the redemption of the toll dues on the Scheldt;

6. Convention of October 29, 1888, regarding the establishment of a definite arrangement guaranteeing the free use of the Suez Canal, subject to the special stipulations provided for by Article 19, of the present treaty;

7. Conventions and agreements of the Universal Postal Union, including the conventions and agreements signed at Madrid on November 30, 1920;

8. International Telegraphic Conventions signed at St. Petersburg on July 10/22, 1875; Regulations and Tariffs drawn up by the International Telegraphic Conference, Lisbon, June 11, 1908.

ARTICLE 100

Turkey undertakes to adhere to the conventions or agreements enumerated below, or to ratify them:—

1. Convention of October 11, 1909, regarding the international circulation of motor cars;

2. Agreement of May 15, 1886, regarding the sealing of railway trucks subject to customs inspection, and protocol of May 18, 1907;

3. Convention of September 23, 1910, respecting the unification of certain regulations regarding collisions and salvage at sea;

4. Convention of December 21, 1904, regarding exemption of hospital ships from dues and charges in ports;

5. Conventions of May 18, 1904, of May 4, 1910, and of September 30, 1921, regarding the suppression of the White Slave Traffic;

6. Conventions of May 4, 1910, regarding the suppression of obscene publications;

7. Sanitary Convention of January 17, 1912, Articles 54, 88 and 90 being reserved;

8. Conventions of November 3, 1881, and April 15, 1889, regarding precautionary measures against phylloxera;

9. Opium Convention, signed at The Hague, January 23, 1912, and additional protocol of 1914;

10. International Radio-Telegraphic Convention of July 5, 1912;

11. Convention regarding liquor traffic in Africa, signed at St. Germain-en-Laye, September 10, 1919;

12. Convention revising the General Act of Berlin of February 26, 1885, and the General Act and Declaration of Brussels of July 2, 1890, signed at St. Germain-en-Laye, September 10, 1919;

13. Convention of October 13, 1919, regulating aerial navigation, provided that Turkey obtains, under the protocol of May 1, 1920, such derogations as her geographical situation may render necessary;

14. Convention of September 26, 1906, signed at Berne, prohibiting the use of white phosphorus in the manufacture of matches.

Turkey further undertakes to take part in the elaboration of new international conventions relating to telegraphy and radio-telegraphy.

PART IV.—COMMUNICATIONS AND SANITARY QUESTIONS

SECTION I.—COMMUNICATIONS

ARTICLE 101

Turkey undertakes to adhere to the convention and to the statute respecting the freedom of transit adopted by the Conference of Barcelona on the 14th April, 1921, as well as to the convention and the statute respecting the régime for waterways of international interest adopted by the said conference on the 19th April, 1921, and to the supplementary protocol.

Turkey accordingly undertakes to bring into force the provisions of these conventions, statutes and protocol as from the entry into force of the present treaty.

ARTICLE 102

Turkey undertakes to adhere to the declaration of Barcelona, dated the 20th April, 1921, "recognizing the rights of the flag of states not possessing a sea-board."

ARTICLE 103

Turkey undertakes to adhere to the recommendations of the Conference of Barcelona, dated the 20th April, 1921, respecting ports placed under an international régime. Turkey will subsequently make known those ports which will be placed under that régime.

ARTICLE 104

Turkey undertakes to adhere to the recommendations of the Conference of Barcelona, dated the 20th April, 1921, respecting international railways.

These recommendations will be brought into force by the Turkish Government on the coming into force of the present treaty and subject to reciprocity.

ARTICLE 105

On the coming into force of the present treaty, Turkey agrees to subscribe to the conventions and arrangements signed at Berne on October 14, 1890, September 20, 1893, July 16, 1895, June 16, 1898, and September 19, 1906, regarding the transportation of goods by rail.

ARTICLE 106

When, as a result of the fixing of new frontiers, a railway connection between two parts of the same country crosses another country, or a branch line from one country has its terminus in another, the conditions of working, in so far as concerns the traffic between the two countries, shall, subject to any special arrangements, be laid down in an agreement to be concluded between the railway administrations concerned. If these administrations cannot come to an agreement as to the terms of such agreement, those conditions shall be decided by arbitration.

The establishment of all new frontier stations between Turkey and the neighboring states, as well as the working of the lines between those stations, shall be settled by agreements similarly concluded.

ARTICLE 107

Travellers and goods coming from or destined for Turkey or Greece, and making use in transit of the three sections of the Oriental railways included between the Græco-Bulgarian frontier and the Græco-Turkish frontier near Kuleli-Burgas, shall not be subject, on account of such transit, to any duty or toll nor to any formality of examination in connection with passports or customs.

A commissioner, who shall be selected by the Council of the League of Nations, shall ensure that the stipulations of this article are carried out.

The Greek and Turkish Governments shall each have the right to appoint a representative to be attached to this commissioner; this representative shall have the duty of drawing the attention of the commissioner to any question relating to the execution of the above-mentioned stipulations, and shall enjoy all the necessary facilities to enable him to accomplish his task. These representatives shall reach an agreement with the commissioner as to the number and nature of the subordinate staff which they will require.

It shall be the duty of the said commissioner to submit, for the decision of the Council of the League of Nations, any question relating to the execution of the said stipulations which he may not have been able to settle. The Greek and Turkish Governments undertake to carry out any decision given by the majority vote of the said Council.

The salary of the said commissioner, as well as the expenses of his work, shall be borne in equal parts by the Greek and Turkish Governments.

In the event of Turkey constructing later a railway line joining Adrianople to the line between Kuleli-Burgas and Constantinople, the stipulations of this article shall lapse in so far as concerns transit between the points on the Greco-Turkish frontier lying near Kuleli-Burgas and Bosna-Keuy respectively.

Each of the two interested Powers shall have the right, after five years from the coming into force of the present treaty, to apply to the Council of the League of Nations with a view to deciding whether it is necessary that the control mentioned in paragraphs 2 to 5 of the present article should be maintained. Nevertheless, it remains understood that the stipulations of paragraph 1 shall remain in force for transit over the two sections of the Oriental railways between the Greco-Bulgarian frontier and Bosna-Keuy.

ARTICLE 108

Subject to any special provisions concerning the transfer of ports and railways, whether owned by the Turkish Government or private companies, situated in the territories detached from Turkey under the present Treaty, and similarly subject to any agreements which have been, or may be, concluded between the contracting Powers relating to the concessionnaires and the pensioning of the personnel, the transfer of railways will take place under the following conditions:—

(1) The works and installations of all the railroads shall be left complete and in as good condition as possible;

(2) When a railway system possessing its own rolling-stock is situated in its entirety in transferred territory, such stock shall be left complete with the railway, in accordance with the last inventory before the 30th October, 1918;

(3) As regards lines, the administration of which will in virtue of the present treaty be divided, the distribution of the rolling-stock shall be made by friendly agreement between the administrations taking over the several sections thereof. This agreement shall have regard to the amount of the material registered on those lines in the last inventory before the 30th October, 1918, the length of the track (sidings included) and the nature and amount of the traffic. Failing agreement, the points in dispute shall be settled by arbitration. The arbitral decision shall also, if necessary, specify the locomotives, carriages and wagons to be left on each section, the conditions of their acceptance and such provisional arrangements as may be judged necessary to ensure for a limited period the current maintenance in existing workshops of the transferred stock;

(4) Stocks of stores, fittings and plant shall be left under the same conditions as the rolling-stock.

ARTICLE 109

In default of any provisions to the contrary, when as the result of the fixing of a new frontier the hydraulic system (canalization, inundation, irrigation, drainage or similar matters) in a state is dependent on works executed within the territory of another state, or when use is made on the territory of a state, in virtue of pre-war usage, of water or hydraulic power, the source of which is on the territory of another state, an agreement shall be made between the states concerned to safeguard the interests and rights acquired by each of them.

Failing an agreement, the matter shall be regulated by arbitration.

ARTICLE 110

Roumania and Turkey will come to an agreement as to an equitable arrangement for the working conditions of the Constanza-Constantinople cable. Failing agreement, the matter shall be settled by arbitration.

ARTICLE 111

Turkey renounces on her own behalf and on behalf of her nationals all rights, titles or privileges of whatsoever nature over the whole or part of such cables as no longer land on her territory.

If the cables or portions thereof transferred under the preceding paragraph are privately owned, the governments to which this property is transferred will have to indemnify the owners. Failing agreement respecting the amount of indemnity, this amount will be fixed by arbitration.

ARTICLE 112

Turkey will retain the rights of property which she may already possess over those cables of which at least one end remains in Turkish territory.

The exercise of the landing rights of the said cables in non-Turkish territory and their working conditions shall be settled in a friendly manner by the states concerned. Failing agreement, the dispute will be settled by arbitration.

ARTICLE 113

Each of the high contracting parties hereby accepts, in so far as it is concerned, the abolition of foreign post offices in Turkey.

SECTION II.—SANITARY QUESTIONS

ARTICLE 114

The Superior Council of Health of Constantinople is abolished. The Turkish administration is entrusted with the sanitary organization of the coasts and frontiers of Turkey.

ARTICLE 115

A single sanitary tariff, the dues and conditions of which shall be fair, shall be applied to all ships without distinction between the Turkish flag and foreign flags, and to nationals of foreign Powers under the same conditions as to nationals of Turkey.

ARTICLE 116

Turkey undertakes to respect entirely the right of the sanitary employees whose services have been terminated to compensation to be appropriated out of the funds of the former Superior Council of Health of Constantinople, and all other rights acquired by employees or former employees of the council, or their representatives. All questions relating to such rights, to the employment of the reserve funds of the former Superior Council of Health of Constantinople, or to the final liquidation of the former sanitary administration, as well as all other similar or cognate questions, shall be regulated by a commission *ad hoc* which shall be composed of a representative of each of the Powers represented on the Superior Council of Health of Constantinople except Germany, Austria and Hungary. In the event of disagreement between the members of the said commission on a question relating to the above-mentioned liquidation, or the employment of the funds remaining after that liquidation, every Power represented on the commission shall have the right to bring the matter to the notice of the Council of the League of Nations, whose decision shall be final.

ARTICLE 117

Turkey and those Powers which are interested in the supervision of the pilgrimages to Jerusalem and to the Hedjaz and the Hedjaz railway shall take such measures as are appropriate in accordance with the provisions of international sanitary conventions. With a view to ensuring complete uniformity in the execution of these measures, these Powers and Turkey shall constitute a Sanitary Co-ordination Commission for pilgrimages, on which the sanitary service of Turkey and the Maritime Sanitary and Quarantine Council of Egypt shall be represented.

This commission must obtain the previous consent of the state on whose territory it holds its meeting.

ARTICLE 118

Reports on the work of the Pilgrimage Co-ordination Commission shall be addressed to the Health Committee of the League of Nations and to the International Office of Public Health, and also to the government of each country which is interested in pilgrimages and makes a request therefor. The commission will give its opinion on every question put to it by the League of Nations, by the International Office of Public Health, or by the interested governments.

PART V.—MISCELLANEOUS PROVISIONS

1. PRISONERS OF WAR

ARTICLE 119

The high contracting parties agree to repatriate at once the prisoners of war and interned civilians who are still in their hands.

The exchange of prisoners of war and interned civilians detained by Greece and Turkey respectively forms the subject of a separate agreement between those Powers signed at Lausanne on the 30th January, 1923.

ARTICLE 120

Prisoners of war and interned civilians awaiting disposal or undergoing sentence for offences against discipline shall be repatriated irrespective of the completion of their sentence or of the proceedings pending against them.

Prisoners of war and interned civilians who are awaiting trial or undergoing sentence for offences other than those against discipline may be detained.

ARTICLE 121

The high contracting parties agree to give every facility in their respective territories for the search for the missing and the identification of prisoners of war and interned civilians who have expressed their desire not to be repatriated.

ARTICLE 122

The high contracting parties undertake to restore on the coming into force of the present treaty all articles, money, securities, documents and personal effects of every description which have belonged to prisoners of war or interned civilians and which have been retained.

ARTICLE 123

The high contracting parties waive reciprocally all repayments of sums due for the maintenance of prisoners of war captured by their armies.

2. GRAVES

ARTICLE 124

Without prejudice to the special provisions of Article 126 of the present treaty, the high contracting parties will cause to be respected and maintained within the territories under their authority the cemeteries, graves, ossuaries and memorials of soldiers and sailors who fell in action or died from wounds, accident or disease since the 29th October, 1914, as well as of prisoners of war and interned civilians who died in captivity after that date.

The high contracting parties will agree to accord in their respective ter-

ritories all necessary facilities to such commissions as each contracting Power may appoint for the purpose of the identification, registration and maintenance of the said cemeteries, ossuaries and graves, and the erection of memorials on their sites. Such commissions shall not have any military character.

The high contracting parties reciprocally undertake, subject to the provisions of their national laws and the requirements of public health, to furnish each other every facility for giving effect to requests that the bodies of such soldiers and sailors may be transferred to their own country.

ARTICLE 125

The high contracting parties further undertake to furnish each other:

(1) A complete list of prisoners of war and interned civilians who have died in captivity, together with all information tending towards their identification.

(2) All information as to the number and position of the graves of all those who have been buried without identification.

ARTICLE 126

The maintenance of the graves, cemeteries, ossuaries and memorials of Turkish soldiers, sailors and prisoners of war who may have died on Roumanian territory since the 27th August, 1916, as well as all other obligations under Articles 124 and 125 regarding interned civilians, shall form the object of a special arrangement between the Roumanian and the Turkish Governments.

ARTICLE 127

In order to complete the general provisions included in Articles 124 and 125, the Governments of the British Empire, France and Italy on the one hand and the Turkish and Greek Governments on the other agree to the special provisions contained in Articles 128 to 136.

ARTICLE 128

The Turkish Government undertakes to grant to the Governments of the British Empire, France and Italy respectively and in perpetuity the land within the Turkish territory in which are situated the graves, cemeteries, ossuaries or memorials of their soldiers and sailors who fell in action or died of wounds, accident or disease, as well as those of prisoners of war and interned civilians who died in captivity.

The Turkish Government will also grant to those governments the land which the commissions provided for in Article 130 shall consider necessary for the establishment of cemeteries for the regrouping of graves, for ossuaries or memorials.

The Turkish Government undertakes further to give free access to these

graves, cemeteries, ossuaries and memorials, and if need be to authorize the construction of the necessary roads and pathways.

The Greek Government undertakes to fulfil the same obligations in so far as concerns its territory.

The above provisions shall not affect Turkish or Greek sovereignty over the land thus granted.

ARTICLE 129

The land to be granted by the Turkish Government will include in particular, as regards the British Empire, the area in the region known as Anzac (Ari Burnu), which is shown on map No. 3.⁵ The occupation of the above-mentioned area shall be subject to the following conditions:

(1) This area shall not be applied to any purpose other than that laid down in the present treaty; consequently it shall not be utilized for any military or commercial object nor for any other object foreign to the purpose mentioned above;

(2) The Turkish Government shall, at all times, have the right to cause this area, including the cemeteries, to be inspected;

(3) The number of civil custodians appointed to look after the cemeteries shall not exceed one custodian to each cemetery. There shall not be any special custodians for the parts of the area lying outside the cemeteries;

(4) No dwelling houses may be erected in the area, either inside or outside the cemeteries, except such as are strictly necessary for the custodians;

(5) On the sea shore of the area no quay, jetty or wharfs may be built to facilitate the landing or embarkation of persons or goods;

(6) Such formalities as may be required may only be fulfilled on the coast inside the Straits and access to the area by the coast on the Ægean Sea shall only be permitted after these formalities have been fulfilled. The Turkish Government agrees that these formalities, which shall be as simple as possible, shall not be, without prejudice to the other stipulations of this article, more onerous than those imposed on other foreigners entering Turkey, and that they should be fulfilled under conditions tending to avoid all unnecessary delay;

(7) Persons who desire to visit the area must not be armed, and the Turkish Government have the right to see to the enforcement of this strict prohibition;

(8) The Turkish Government must be informed at least a week in advance of the arrival of any party of visitors exceeding 150 persons.

ARTICLE 130

Each of the British, French and Italian Governments shall appoint a commission, on which the Turkish and Greek Governments will appoint a representative, to which will be entrusted the duty of regulating on the spot

⁵ Omitted from this SUPPLEMENT.

questions affecting the graves, cemeteries, ossuaries and memorials. The duties of these commissions shall extend particularly to:

(1) the official recognition of the zones where burials have or may have already taken place and the registration of cemeteries, ossuaries, or memorials already existing;

(2) fixing the conditions in which, if necessary, graves may in future be concentrated, and deciding, in conjunction with the Turkish representative in Turkish territory and the Greek representative in Greek territory, the sites of the cemeteries, ossuaries and memorials still to be established, and defining the boundaries of these sites in such a way as shall restrict the land to be occupied within the limits indispensable for the purpose;

(3) communicating to the Turkish and Greek Governments in the name of the respective governments a final plan of their graves, cemeteries, ossuaries and memorials, whether already established or to be established.

ARTICLE 131

The government in whose favor the grant is made undertakes not to employ the land nor to allow it to be employed for any purpose other than that to which it is dedicated. If this land is situated on the coast, the shore may not be employed by the concessionary government for any military, marine or commercial purpose of whatever nature. The sites of graves and cemeteries which may no longer be used for that purpose and which are not used for the erection of memorials shall be returned to the Turkish or Greek Government.

ARTICLE 132

Any necessary legislative or administrative measures for the grant to the British, French and Italian Governments respectively of full, exclusive and perpetual use of the land referred to in Articles 128 to 130 shall be taken by the Turkish Government and Greek Government respectively within six months of the date of the notification to be made in accordance with paragraph 3 of Article 130. If any compulsory acquisition of the land is necessary, it will be effected by and at the cost of the Turkish Government or the Greek Government, as the case may be.

ARTICLE 133

The British, French and Italian Governments may respectively entrust to such organizations as each of them may deem fit the establishment, arrangement and maintenance of the graves, cemeteries, ossuaries and memorials of their nationals. These organizations shall have no military character. They alone shall have the right to undertake the exhumation or removal of bodies necessary for the concentration of graves and establishment of cemeteries and ossuaries, as well as the exhumation and removal of such bodies as the governments to whom the grant of land is made shall deem it necessary to transfer to their own country.

ARTICLE 134

The British, French and Italian Governments shall have the right to entrust the maintenance of their graves, cemeteries, ossuaries and memorials in Turkey to custodians appointed from among their own nationals. These custodians shall be recognized by the Turkish authorities and shall receive from them every assistance necessary for the safeguard and protection of these graves, cemeteries, ossuaries and memorials. The custodians shall have no military character, but may be armed for their personal defence with a revolver or automatic pistol.

ARTICLE 135

The land referred to in Articles 128 to 131 shall not be subjected by Turkey or the Turkish authorities, or by Greece or the Greek authorities, as the case may be, to any form of rent or taxation. Representatives of the British, French or Italian Governments, as well as persons desirous of visiting the graves, cemeteries, ossuaries and memorials, shall at all times have free access thereto. The Turkish Government and the Greek Government respectively undertake to maintain in perpetuity the roads leading to the said land.

The Turkish Government and the Greek Government respectively undertake to afford to the British, French and Italian Governments all necessary facilities for obtaining a sufficient water supply for the requirements of the staff engaged in the maintenance or protection of the said graves, cemeteries, ossuaries and memorials, and for the irrigation of the land.

ARTICLE 136

The British, French and Italian Governments undertake to accord to the Turkish Government the benefits of the provisions contained in Articles 128 and 130 to 135 of the present treaty for the establishment of graves, cemeteries, ossuaries and memorials of Turkish soldiers and sailors existing on the territories under their authority, including the territories detached from Turkey.

3. GENERAL PROVISIONS

ARTICLE 137

Subject to any agreements concluded between the high contracting parties, the decisions taken and orders issued since the 30th October, 1918, until the coming into force of the present treaty, by or in agreement with the authorities of the Powers who have occupied Constantinople, and concerning the property, rights and interests of their nationals, of foreigners or of Turkish nationals, and the relations of such persons with the authorities of Turkey, shall be regarded as definitive and shall give rise to no claim against these Powers or their authorities.

All other claims arising from injury suffered in consequence of any such decisions or orders shall be submitted to the Mixed Arbitral Tribunal.

ARTICLE 138

In judicial matters, the decisions given and orders issued in Turkey from the 30th October, 1918, until the coming into force of the present treaty by all judges, courts or authorities of the Powers who have occupied Constantinople, or by the Provisional Mixed Judicial Commission established on the 8th December, 1921, as well as the measures taken in execution of such decisions or orders, shall be regarded as definitive, without prejudice, however, to the terms of paragraphs IV and VI of the amnesty declaration dated this day.

Nevertheless, in the event of a claim being presented by a private person in respect of damage suffered by him in consequence of a judicial decision in favor of another private person given in a civil matter by a military or police court, this claim shall be brought before the Mixed Arbitral Tribunal, which may in a proper case, order the payment of compensation or even restitution of the property in question.

ARTICLE 139

Archives, registers, plans, title-deeds and other documents of every kind relating to the civil, judicial or financial administration, or the administration of Wakfs, which are at present in Turkey and are only of interest to the government of a territory detached from the Ottoman Empire, and reciprocally those in a territory detached from the Ottoman Empire which are only of interest to the Turkish Government, shall reciprocally be restored.

Archives, registers, plans, title-deeds and other documents mentioned above which are considered by the government in whose possession they are as being also of interest to itself, may be retained by that government, subject to its furnishing on request photographs or certified copies to the government concerned.

Archives, registers, plans, title-deeds and other documents which have been taken away either from Turkey or from detached territories shall reciprocally be restored in original, in so far as they concern exclusively the territories from which they have been taken.

The expense entailed by these operations shall be paid by the Government applying therefor.

The above stipulations apply in the same manner to the registers relating to real estates or Wakfs in the districts of the former Ottoman Empire transferred to Greece after 1912.

ARTICLE 140

Prizes made during the war between Turkey and the other contracting Powers prior to the 30th October, 1918, shall give rise to no claim on either

side. The same shall apply to seizures effected after that date, for violation of the armistice, by the Powers who have occupied Constantinople.

It is understood that no claim shall be made, either by the governments of the Powers who have occupied Constantinople or their nationals, or by the Turkish Government or its nationals, respecting small craft of all kinds, vessels of light tonnage, yachts and lighters which any of the said governments may, between the 29th October, 1914, until the 1st January, 1923, have disposed of in their own harbors or in harbors occupied by them. Nevertheless, this stipulation does not prejudice the terms of paragraph VI of the Amnesty Declaration dated this day, nor the claims which private persons may be able to establish against other private persons in virtue of rights held before the 29th October, 1914.

Vessels under the Turkish flag seized by the Greek forces after the 30th October, 1918, shall be restored to Turkey.

ARTICLE 141

In accordance with Article 25 of the present treaty, Articles 155, 250 and 440 and Annex III, Part VIII (Reparation) of the Treaty of Peace of Versailles, dated the 28th June, 1919, the Turkish Government and its nationals are released from any liability to the German Government or to its nationals in respect of German vessels which were the object during the war of a transfer by the German Government or its nationals to the Ottoman Government or its nationals without the consent of the Allied Governments, and at present in the possession of the latter.

The same shall apply, if necessary, in the relations between Turkey and the other Powers which fought on her side.

ARTICLE 142

The separate convention concluded on the 30th January, 1923, between Greece and Turkey, relating to the exchange of the Greek and Turkish populations, will have as between these two high contracting parties the same force and effect as if it formed part of the present treaty.

ARTICLE 143

The present treaty shall be ratified as soon as possible.

The ratifications shall be deposited at Paris.

The Japanese Government will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris when their ratification has been given; in that case, they must transmit the instrument of ratification as soon as possible.

Each of the signatory Powers will ratify by one single instrument the present treaty and the other instruments signed by it and mentioned in the Final Act of the Conference of Lausanne, in so far as these require ratification.

A first *procès-verbal* of the deposit of ratifications shall be drawn up as soon as Turkey, on the one hand, and the British Empire, France, Italy and Japan, or any three of them, on the other hand, have deposited the instruments of their ratifications.

From the date of this first *procès-verbal* the treaty will come into force between the high contracting parties who have thus ratified it. Thereafter it will come into force for the other Powers at the date of the deposit of their ratifications.

As between Greece and Turkey, however, the provisions of Articles 1, 2 (2) and 5-11 inclusive will come into force as soon as the Greek and Turkish Governments have deposited the instruments of their ratifications, even if at that time the *procès-verbal* referred to above has not yet been drawn up.

The French Government will transmit to all the signatory Powers a certified copy of the *procès-verbaux* of the deposit of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present treaty.

Done at Lausanne, the 24th July, 1923, in a single copy, which will be deposited in the archives of the Government of the French Republic, which will transmit a certified copy to each of the contracting Powers.

[L.S.] HORACE RUMBOLD.	[L.S.] CONST. DIAMANDY.
[L.S.] PELLÉ.	[L.S.] CONST. CONTZESCO.
[L.S.] GARRONI.	[]
[L.S.] G. C. MONTAGNA.	[L.S.] M. ISMET.
[L.S.] K. OTCHIAI.	[L.S.] DR. RIZA NOUR.
[L.S.] E. K. VENISELOS.	[L.S.] HASSAN.
[L.S.] D. CACLAMANOS.	

II. CONVENTION RELATING TO THE RÉGIME OF THE STRAITS

The British Empire, France, Italy, Japan, Bulgaria, Greece, Roumania, Russia, the Serb-Croat-Slovene State and Turkey, being desirous of ensuring in the Straits freedom of transit and navigation between the Mediterranean Sea and the Black Sea for all nations, in accordance with the principle laid down in Article 23 of the Treaty of Peace signed this day,

And considering that the maintenance of that freedom is necessary to the general peace and the commerce of the world,

Have decided to conclude a convention to this effect, and have appointed as their respective plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Sir Horace George Montagu Rumbold, Baronet, G.C.M.G., High Commissioner at Constantinople;

THE PRESIDENT OF THE FRENCH REPUBLIC:

General Maurice Pellé, Ambassador of France, High Commissioner of the Republic in the East, Grand Officer of the National Order of the Legion of Honor;

HIS MAJESTY THE KING OF ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom, Ambassador of Italy, High Commissioner at Constantinople, Grand Cross of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy;

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Plenipotentiary at Athens, Commander of the Order of Saints Maurice and Lazarus, Grand Officer of the Crown of Italy;

HIS MAJESTY THE EMPEROR OF JAPAN:

Mr. Kentaro Otchiai, Jusammi, First Class of the Order of the Rising Sun, Ambassador Extraordinary and Plenipotentiary at Rome;

HIS MAJESTY THE KING OF THE BULGARIANS:

M. Bogdan Morphof, formerly Minister of Railways, Posts and Telegraphs;

M. Dimitri Stanciof, Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary at London, Grand Cross of the Order of Saint Alexander;

HIS MAJESTY THE KING OF THE HELLENES:

M. Eleftherios K. Veniselos, formerly President of the Council of Ministers, Grand Cross of the Order of the Savior;

M. Demetrios Caelamanos, Minister Plenipotentiary at London, Commander of the Order of the Savior;

HIS MAJESTY THE KING OF ROUMANIA:

M. Constantine I. Diamandy, Minister Plenipotentiary;

M. Constantine Contzesco, Minister Plenipotentiary;

RUSSIA:

M. Nicolas Ivanovitch Iordanski;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Dr. Miloutine Yovanovitch, Envoy Extraordinary and Minister Plenipotentiary at Berne;

THE GOVERNMENT OF THE GRAND NATIONAL ASSEMBLY OF TURKEY:

Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople;

Dr. Riza Nur Bey, Minister for Health and for Public Assistance, Deputy for Sinope;

Hassan Bey, formerly Minister, Deputy for Trebizond;

Who, having produced their full powers, found in good and due form, have agreed as follows:

ARTICLE 1

The high contracting parties agree to recognize and declare the principle of freedom of transit and of navigation by sea and by air in the Strait of the

Dardanelles, the Sea of Marmora and the Bosphorus, hereinafter comprised under the general term of the "Straits."

ARTICLE 2

The transit and navigation of commercial vessels and aircraft, and of war vessels and aircraft in the Straits in time of peace and in time of war shall henceforth be regulated by the provisions of the attached annex.

ANNEX

RULES FOR THE PASSAGE OF COMMERCIAL VESSELS AND AIRCRAFT, AND OF WAR VESSELS AND AIRCRAFT THROUGH THE STRAITS

1

Merchant Vessels, including Hospital Ships, Yachts and Fishing Vessels and non-Military Aircraft

(a) *In time of peace.*

Complete freedom of navigation and passage by day and by night under any flag and with any kind of cargo, without any formalities, or tax, or charge whatever (subject, however, to international sanitary provisions) unless for services directly rendered, such as pilotage, light, towage or other similar charges, and without prejudice to the rights exercised in this respect by the services and undertakings now operating under concessions granted by the Turkish Government.

To facilitate the collection of these dues, merchant vessels passing the Straits will communicate to stations appointed by the Turkish Government their name, nationality, tonnage and destination.

Pilotage remains optional.

(b) *In time of war, Turkey being neutral.*

Complete freedom of navigation and passage by day and by night under the same conditions as above. The duties and rights of Turkey as a neutral Power cannot authorize her to take any measures liable to interfere with navigation through the Straits, the waters of which, and the air above which, must remain entirely free in time of war, Turkey being neutral just as in time of peace.

Pilotage remains optional.

(c) *In time of war, Turkey being a belligerent.*

Freedom of navigation for neutral vessels and neutral non-military aircraft, if the vessel or aircraft in question does not assist the enemy, particularly by carrying contraband, troops or enemy nationals. Turkey will have the right to visit and search such vessels and aircraft, and for this purpose aircraft are to alight on the ground or on the sea in such areas as are specified and prepared for this purpose by Turkey. The rights of Turkey to apply to enemy vessels the measures allowed by international law are not affected.

Turkey will have full power to take such measures as she may consider necessary to prevent enemy vessels from using the Straits. These measures, however, are not to be of such a nature as to prevent the free passage of neutral vessels, and Turkey agrees to provide such vessels with either the necessary instructions or pilots for the above purpose.

2

Warships, including Fleet Auxiliaries, Troopships, Aircraft Carriers and Military Aircraft

(a) *In time of peace.*

Complete freedom of passage by day and by night under any flag, without any formalities, or tax, or charge whatever, but subject to the following restrictions as to the total force:

The maximum force which any one Power may send through the Straits into the Black Sea is not to be greater than that of the most powerful fleet of the littoral Powers of the Black Sea existing in that sea at the time of passage; but with the proviso that the Powers reserve to themselves the right to send into the Black Sea, at all times and under all circumstances, a force of not more than three ships, of which no individual ship shall exceed 10,000 tons.

Turkey has no responsibility in regard to the number of war vessels which pass through the Straits.

In order to enable the above rule to be observed, the Straits commission provided for in Article 10 will, on the 1st January and the 1st July of each year, enquire of each Black Sea littoral Power the number of each of the following classes of vessel which such Power possesses in the Black Sea: Battle-ships, battle-cruisers, aircraft-carriers, cruisers, destroyers, submarines, or other types of vessels as well as naval aircraft; distinguishing between the ships which are in active commission and the ships with reduced complements, the ships in reserve and the ships undergoing repairs or alterations.

The Straits commission will then inform the Powers concerned that the strongest naval force in the Black Sea comprises: Battleships, battle-cruisers, aircraft carriers, cruisers, destroyers, submarines, aircraft and units of other types which may exist. The Straits commission will also immediately inform the Powers concerned when, owing to the passage into or out of the Black Sea of any ship of the strongest Black Sea force, any alteration in that force has taken place.

The naval force that may be sent through the Straits into the Black Sea will be calculated on the number and type of the ships of war in active commission only.

(b) *In time of war, Turkey being neutral.*

Complete freedom of passage by day and by night under any flag, without any formalities, or tax, or charge whatever, under the same limitations as in paragraph 2 (a).

However, these limitations will not be applicable to any belligerent Power to the prejudice of its belligerent rights in the Black Sea.

The rights and duties of Turkey as a neutral Power cannot authorize her to take any measures liable to interfere with navigation through the Straits, the waters of which, and the air above which, must remain entirely free in time of war, Turkey being neutral, just as in time of peace.

Warships and military aircraft of belligerents will be forbidden to make any capture, to exercise the right of visit and search, or to carry out any other hostile act in the Straits.

As regards revictualling and carrying out repairs, war vessels will be subject to the terms of the Thirteenth Hague Convention of 1907, dealing with maritime neutrality.

Military aircraft will receive in the Straits similar treatment to that accorded under the Thirteenth Hague Convention of 1907 to warships, pending the conclusion of an international convention establishing the rules of neutrality for aircraft.

(c) *In time of war, Turkey being belligerent.*

Complete freedom of passage for neutral warships, without any formalities, or tax, or charge whatever, but under the same limitations as in paragraph 2 (a).

The measures taken by Turkey to prevent enemy ships and aircraft from using the Straits are not to be of such a nature as to prevent the free passage of neutral ships and aircraft, and Turkey agrees to provide the said ships and aircraft with either the necessary instructions or pilots for the above purpose.

Neutral military aircraft will make the passage of the Straits at their own risk and peril, and will submit to investigation as to their character. For this purpose aircraft are to alight on the ground or on the sea in such areas as are specified and prepared for this purpose by Turkey.

(a) The passage of the Straits by submarines of Powers at peace with Turkey must be made on the surface.

(b) The officer in command of a foreign naval force, whether coming from the Mediterranean or the Black Sea, will communicate, without being compelled to stop, to a signal station at the entrance to the Dardanelles or the Bosphorus, the number and the names of vessels under his orders which are entering the Straits.

These signal stations shall be notified from time to time by Turkey; until such signal stations are notified, the freedom of passage for foreign war vessels in the Straits shall not thereby be prejudiced, nor shall their entry into the Straits be for this reason delayed.

(c) The right of military and non-military aircraft to fly over the Straits, under the conditions laid down in the present rules, necessitates for aircraft—

(i) Freedom to fly over a strip of territory of five kilometres wide on each side of the narrow parts of the Straits;

(ii) Liberty, in the event of a forced landing, to alight on the coast or on the sea in the territorial waters of Turkey.

4

Limitation of Time of Transit for Warships

In no event shall warships in transit through the Straits, except in the event of damage or peril of the sea, remain therein beyond the time which is necessary for them to effect their passage, including the time of anchorage during the night if necessary for safety of navigation.

5

Stay in the Ports of the Straits and of the Black Sea

(a) Paragraphs 1, 2 and 3 of this annex apply to the passage of vessels, warships and aircraft through and over the Straits and do not affect the right of Turkey to make such regulations as she may consider necessary regarding the number of men-of-war and military aircraft of any one Power which may visit Turkish ports or aerodromes at one time, and the duration of their stay.

(b) Littoral Powers of the Black Sea will also have a similar right as regards their ports and aerodromes.

(c) The light-vessels which the Powers at present represented on the European commission of the Danube maintain at the mouths of that river as far up as Galatz will be regarded as additional to the men-of-war referred to in paragraph 2, and may be replaced in case of need.

6

Special Provisions relating to Sanitary Protection

Warships which have on board cases of plague, cholera or typhus, or which have had such cases on board during the last seven days, and warships which have left an infected port within less than five times 24 hours must pass through the Straits in quarantine and apply by the means on board such prophylactic measures as are necessary to prevent any possibility of the Straits being infected.

The same rule shall apply to merchant ships having a doctor on board and passing straight through the Straits without calling at a port or breaking bulk.

Merchant ships not having a doctor on board shall be obliged to comply with the international sanitary regulations before entering the Straits, even if they are not to call at a port therein.

Warships and merchant vessels calling at one of the ports in the Straits shall be subject in that port to the international sanitary regulations applicable in the port in question.

ARTICLE 3

With a view to maintaining the Straits free from any obstacle to free passage and navigation, the provisions contained in Articles 4 to 9 will be

applied to the waters and shores thereof as well as to the islands situated therein, or in the vicinity.

ARTICLE 4

The zones and islands indicated below shall be demilitarized:

1. Both shores of the Straits of the Dardanelles and the Bosphorus over the extent of the zones delimited below (see the attached map)⁶:

Dardanelles:

On the north-west, the Gallipoli Peninsula and the area south-east of a line traced from a point on the Gulf of Xeros 4 kilometres north-east of Bakla-Barnu, reaching the Sea of Marmora at Kumbaghi and passing south of Kavak (this village excluded);

On the south-east, the area included between the coast and a line 20 kilometres from the coast, starting from Cape Eski-Stamboul opposite Tenedos and reaching the Sea of Marmora at a point on the coast immediately north of Karabigha.

Bosphorus (without prejudice to the special provisions relating to Constantinople contained in Article 8):

On the east, the area extending up to a line 15 kilometres from the eastern shore of the Bosphorus;

On the west, the area up to a line 15 kilometres from the western shore of the Bosphorus.

2. All the islands in the Sea of Marmora, with the exception of the island of Emir Ali Adasi.

3. In the Ægean Sea, the islands of Samothrace, Lemnos, Imbros, Tenedos and Rabbit Islands.

ARTICLE 5

A commission composed of four representatives appointed respectively by the Governments of France, Great Britain, Italy and Turkey shall meet within 15 days of the coming into force of the present convention to determine on the spot the boundaries of the zone laid down in Article 4 (1).

The governments represented on that commission will pay the salaries of their respective representatives.

Any general expenses incurred by the commission shall be borne in equal shares by the Powers represented thereon.

ARTICLE 6

Subject to the provisions of Article 8 concerning Constantinople, there shall exist, in the demilitarized zones and islands, no fortifications, no permanent artillery organization, no submarine engines of war other than submarine vessels, no military aerial organization, and no naval base.

No armed forces shall be stationed in the demilitarized zones and islands except the police and gendarmerie forces necessary for the maintenance of

⁶ Omitted from this SUPPLEMENT

order; the armament of such forces will be composed only of revolvers, swords, rifles and four Lewis guns per hundred men, and will exclude any artillery.

In the territorial waters of the demilitarized zones and islands, there shall exist no submarine engines of war other than submarine vessels.

Notwithstanding the preceding paragraphs Turkey will retain the right to transport her armed forces through the demilitarized zones and islands of Turkish territory, as well as through their territorial waters, where the Turkish fleet will have the right to anchor.

Moreover, in so far as the Straits are concerned, the Turkish Government shall have the right to observe by means of aeroplanes or balloons both the surface and the bottom of the sea. Turkish aeroplanes will always be able to fly over the waters of the Straits and the demilitarized zones of Turkish territory, and will have full freedom to alight therein, either on land or on sea.

In the demilitarized zones and islands and in their territorial waters, Turkey and Greece shall similarly be entitled to effect such movements of personnel as are rendered necessary for the instruction outside these zones and islands of the men recruited therein.

Turkey and Greece shall have the right to organize in the said zones and islands in their respective territories any system of observation and communication, both telegraphic, telephonic and visual. Greece shall be entitled to send her fleet into the territorial waters of the demilitarized Greek islands, but may not use these waters as a base of operations against Turkey nor for any military or naval concentration for this purpose.

ARTICLE 7

No submarine engines of war other than submarine vessels shall be installed in the waters of the Sea of Marmora.

The Turkish Government shall not instal any permanent battery or torpedo tubes, capable of interfering with the passage of the Straits, in the coastal zone of the European shore of the Sea of Marmora or in the coastal zone on the Anatolian shore situated to the east of the demilitarized zone of the Bosphorus as far as Darije.

ARTICLE 8

At Constantinople, including for this purpose Stamboul, Pera, Galata, Scutari, as well as Princes' Islands, and in the immediate neighborhood of Constantinople, there may be maintained for the requirements of the capital, a garrison with a maximum strength of 12,000 men. An arsenal and naval base may also be maintained at Constantinople.

ARTICLE 9

If, in case of war, Turkey, or Greece, in pursuance of their belligerent rights, should modify in any way the provisions of demilitarization pre-

scribed above, they will be bound to reestablish as soon as peace is concluded the régime laid down in the present convention.

ARTICLE 10

There shall be constituted at Constantinople an international commission composed in accordance with Article 12 and called the "Straits Commission."

ARTICLE 11

The commission will exercise its functions over the waters of the Straits.

ARTICLE 12

The commission shall be composed of a representative of Turkey, who shall be president, and representatives of France, Great Britain, Italy, Japan, Bulgaria, Greece, Roumania, Russia, and the Serb-Croat-Slovene State, in so far as these Powers are signatories of the present convention, each of these Powers being entitled to representation as from its ratification of the said convention.

The United States of America, in the event of their acceding to the present convention, will also be entitled to have one representative on the commission.

Under the same conditions any independent littoral states of the Black Sea which are not mentioned in the first paragraph of the present article will possess the same right.

ARTICLE 13

The governments represented on the commission will pay the salaries of their representatives. Any incidental expenditure incurred by the commission will be borne by the said governments in the proportion laid down for the division of the expenses of the League of Nations.

ARTICLE 14

It will be the duty of the commission to see that the provisions relating to the passage of warships and military aircraft are carried out; these provisions are laid down in paragraphs 2, 3 and 4 of the annex to Article 2.

ARTICLE 15

The Straits Commission will carry out its functions under the auspices of the League of Nations, and will address to the League an annual report giving an account of its activities, and furnishing all information which may be useful in the interests of commerce and navigation; with this object in view the commission will place itself in touch with the departments of the Turkish Government dealing with navigation through the Straits.

ARTICLE 16

It will be the duty of the commission to prescribe such regulations as may be necessary for the accomplishment of its task.

ARTICLE 17

The terms of the present convention will not infringe the right of Turkey to move her fleet freely in Turkish waters.

ARTICLE 18

The high contracting parties, desiring to secure that the demilitarization of the Straits and of the contiguous zones shall not constitute an unjustifiable danger to the military security of Turkey, and that no act of war should imperil the freedom of the Straits or the safety of the demilitarized zones, agree as follows:

Should the freedom of navigation of the Straits or the security of the demilitarized zones be imperilled by a violation of the provisions relating to freedom of passage, or by a surprise attack or some act of war or threat of war, the high contracting parties, and in any case France, Great Britain, Italy and Japan, acting in conjunction, will meet such violation, attack, or other act of war or threat of war, by all the means that the Council of the League of Nations may decide for this purpose.

So soon as the circumstance which may have necessitated the action provided for in the preceding paragraph shall have ended, the régime of the Straits as laid down by the terms of the present convention shall again be strictly applied.

The present provision, which forms an integral part of those relating to the demilitarization and to the freedom of the Straits, does not prejudice the right and obligations of the high contracting parties under the Covenant of the League of Nations.

ARTICLE 19

The high contracting parties will use every possible endeavor to induce non-signatory Powers to accede to the present convention.

This adherence will be notified through the diplomatic channel to the Government of the French Republic, and by that Government to all signatory or adhering states. The adherence will take effect as from the date of notification to the French Government.

ARTICLE 20

The present convention shall be ratified. The ratifications shall be deposited at Paris as soon as possible.

The convention will come into force in the same way as the Treaty of Peace signed this day. In so far as concerns those Powers who are not signatories of this treaty and who at that date shall not yet have ratified

the present convention, this convention will come into force as from the date on which they deposit their respective ratifications, which deposit shall be notified to the other contracting Powers by the French Government.

In faith whereof the above-named plenipotentiaries have signed the present convention.

Done at Lausanne the 24th July, 1923, in a single copy which will remain deposited in the archives of the Government of the French Republic, and of which authenticated copies will be transmitted to each of the contracting Powers.

[L.S.] HORACE RUMBOLD.	[L.S.] D. CACLAMANOS.
[L.S.] PELLÉ.	[L.S.] CONST. DIAMANDY.
[L.S.] GARRONI.	[L.S.] CONST. CONTZESCO.
[L.S.] G. C. MONTAGNA.	[]
[L.S.] K. OTCHIAL.	[] ⁷
[L.S.] B. MORPHOFF.	[L.S.] M. ISMET.
[L.S.] STANCIOFF.	[L.S.] DR. RIZA NOUR.
[L.S.] E. K. VENISÉLOS.	[L.S.] HASSAN.

III. CONVENTION RESPECTING THE THRACIAN FRONTIER

The British Empire, France, Italy, Japan, Bulgaria, Greece, Roumania, the Serb-Croat-Slovene State and Turkey, being desirous of ensuring the maintenance of peace on the frontiers of Thrace,

And considering it necessary for this purpose that certain special reciprocal measures should be taken on both sides of this frontier, as provided in Article 24 of the Treaty of Peace signed this day,

Have decided to conclude a convention for this purpose, and have appointed as their plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Sir Horace George Montagu Rumbold, Baronet, G. C. M. G., High Commissioner at Constantinople;

THE PRESIDENT OF THE FRENCH REPUBLIC:

General Maurice Pellé, Ambassador of France, High Commissioner of the Republic in the East, Grand Officer of the National Order of the Legion of Honor;

HIS MAJESTY THE KING OF ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom, Ambassador of Italy, High Commissioner at Constantinople, Grand Cross of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy;

⁷ The Russian Government have informed the Secretary-General of the Conference that the Russian Delegate will sign this convention at Constantinople on August 14.

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Plenipotentiary at Athens, Commander of the Order of Saints Maurice and Lazarus, Grand Officer of the Crown of Italy;

HIS MAJESTY THE EMPEROR OF JAPAN:

Mr. Kentaro Otchiai, Jusammi, First Class of the Order of the Rising Sun, Ambassador Extraordinary and Plenipotentiary at Rome;

HIS MAJESTY THE KING OF THE BULGARIANS:

M. Bogdan Morphoff, formerly Minister of Railways, Posts and Telegraphs;

M. Dimitri Stanciof, Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary at London, Grand Cross of the Order of Saint Alexander;

HIS MAJESTY THE KING OF THE HELLENES:

M. Eleftherios K. Veniselos, formerly President of the Council of Ministers, Grand Cross of the Order of the Savior;

M. Demetrios Caclamanos, Minister Plenipotentiary at London, Commander of the Order of the Savior;

HIS MAJESTY THE KING OF ROUMANIA:

M. Constantine I. Diamandy, Minister Plenipotentiary;

M. Constantine Contzesco, Minister Plenipotentiary;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Dr. Miloutine Yovanovitch, Envoy Extraordinary and Minister Plenipotentiary at Berne;

THE GOVERNMENT OF THE GRAND NATIONAL ASSEMBLY OF TURKEY:

Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople;

Dr. Riza Nour Bey, Minister for Health and for Public Assistance, Deputy for Sinope;

Hassan Bey, formerly Minister, Deputy for Trebizond;

Who, having produced their full powers, found in good and due form, have agreed as follows:—

ARTICLE 1

From the Ægean Sea to the Black Sea the territories extending on both sides of the frontiers separating Turkey from Bulgaria and from Greece shall be demilitarized to a depth of about 30 kilometres within the following limits (see the attached map)⁸:

(1) *In Turkish territory*, from the Ægean Sea to the Black Sea:

a line generally parallel to the frontier of Turkey with Greece and Bulgaria, defined in Article 2, paragraphs 1 and 2, of the Treaty of Peace signed this day. This line shall be traced at a minimum distance of 30 kilometres from that frontier, except in the neighborhood of Kirk Kilisse, where the town itself, and an area within a radius of at least 5 kilometres from the centre of the town shall be excluded from the demilitarized zone. The line will run from Ibrije-Burnu on the Ægean Sea, to Serbes-Burnu on the Black Sea;

⁸ Omitted from this SUPPLEMENT.

(2) *In Greek territory*, from the Aegean Sea to the Greco-Bulgarian frontier: a line starting from Cape Makri (the village of Makri being excluded), thence northwards generally parallel to the course of the Maritza as far as Tahtali, then passing eastwards of Meherkoz to a point to be determined on the Greco-Bulgarian frontier, about 15 kilometres to the west of Kuchuk-Derbend;

(3) *In Bulgarian territory*, from the Greco-Bulgarian frontier to the Black Sea:

a line running from the point defined above, crossing the road from Adrianople to Kossukavak at a point 5 kilometres to the west of Papas-Keui, thence running at a distance of at least 30 kilometres from the Greco-Bulgarian frontier, and from the Turco-Bulgarian frontier, except in the neighborhood of Harmanli, where the town itself, and an area within a radius of at least 5 kilometres from the centre of the town, shall be excluded from the demilitarized zone; the line shall reach the Black Sea at the head of the bay situated to the north-west of Anberler.

ARTICLE 2

A boundary commission, which shall be set up within fifteen days from the coming into force of the present convention, shall settle and trace on the spot the boundaries defined in Article 1. This commission shall be composed of representatives appointed by France, Great Britain, Italy, Bulgaria, Greece and Turkey, each Power having one representative. The Bulgarian, Greek and Turkish representatives shall only take part in the work concerning the territory of Bulgaria, Greece and Turkey respectively; however, the combined result of these operations shall be drawn up and registered at a plenary meeting of the commission.

ARTICLE 3

The demilitarization of the zones defined in Article 1 shall be effected and maintained in accordance with the following provisions:

(1) All permanent fortifications and field works actually in existence shall be disarmed and dismantled by the Power on whose territory they are situated. No new fortification or work of this nature shall be constructed, and no dépôt of arms or of war material or any other offensive or defensive installation of either a military, naval or aeronautical character shall be organized.

(2) No armed force, other than the special elements, such as gendarmerie, police, customs officers, frontier guards, necessary for insuring internal order and the supervision of the frontiers, shall be stationed or move in the zones.

The number of these special elements, which must not include any air force, shall not exceed:

- (a) in the demilitarized zone of Turkish territory a total of 5,000 men;
- (b) in the demilitarized zone of Greek territory a total of 2,500 men;

(c) in the demilitarized zone of Bulgarian territory a total of 2,500 men.

Their armament shall be composed only of revolvers, swords, rifles and four Lewis guns per 100 men, and will exclude any artillery.

These provisions shall not affect the obligations incurred by Bulgaria under the Treaty of Neuilly of the 27th November, 1919.

(3) Military or naval aircraft of any flag whatsoever are forbidden to fly over the demilitarized zone.

ARTICLE 4

In the event of one of the bordering Powers whose territory forms the subject of the present convention having any complaint to make respecting the observance of the preceding provisions, this complaint shall be brought by that Power before the Council of the League of Nations.

ARTICLE 5

The present convention shall be ratified.

The ratifications shall be deposited at Paris as soon as possible.

The convention shall come into force as soon as Bulgaria, Greece and Turkey shall respectively have ratified it.

These ratifications shall be recorded in a special *procès-verbal*. In so far as concerns the other Powers which have not at that date ratified the convention, it shall come into force as from the date on which they deposit their respective ratifications, which deposit shall be notified to the other contracting Powers by the Government of the French Republic.

The Japanese Government shall be entitled merely to inform the Government of the French Republic, through their diplomatic representative in Paris, that ratification has been given, and in that event the Japanese Government shall forward the instrument of ratification as soon as possible.

In faith whereof the above-mentioned plenipotentiaries have signed the present convention.

Done at Lausanne, the 24th July, 1923, in a single copy, which shall be deposited in the archives of the Government of the French Republic, which will transmit a certified copy thereof to each of the signatory Powers.

[L.S.] HORACE RUMBOLD.

[L.S.] D. CACLAMANOS.

[L.S.] PELLÉ.

[L.S.] CONST. DIAMANDY.

[L.S.] GARRONI.

[L.S.] CONST. CONTZESCO.

[L.S.] G. C. MONTAGNA.

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[L.S.] K. OTCHIAL.

[L.S.] M. ISMET.

[L.S.] B. MORPHOFF.

[L.S.] DR. RIZA NOUR.

[L.S.] STANCIOFF.

[L.S.] HASSAN.

[L.S.] E. K. VENISÉLOS.

OFFICIAL DOCUMENTS

TREATY WITH TURKEY AND OTHER INSTRUMENTS SIGNED AT LAUSANNE, JULY 24, 1923¹

IV. CONVENTION RESPECTING CONDITIONS OF RESIDENCE AND BUSINESS AND JURISDICTION

The British Empire, France, Italy, Japan, Greece, Roumania and the Serb-Croat-Slovene State, of the one part, and Turkey, of the other part;

Being desirous of prescribing, in accordance with modern international law, the conditions under which nationals of the other contracting Powers may settle in Turkey and Turkish nationals may settle in the territory of those Powers, as well as certain questions relating to jurisdiction,

Have decided to conclude a convention to this effect, and have appointed as their plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Sir Horace George Montagu Rumbold, Baronet, .
G.C.M.G., High Commissioner at Constantinople;

THE PRESIDENT OF THE FRENCH REPUBLIC:

General Maurice Pellé, Ambassador of France, High Commissioner of the Republic in the East, Grand Officer of the National Order of the Legion of Honor;

HIS MAJESTY THE KING OF ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom, Ambassador of Italy, High Commissioner at Constantinople, Grand Cross of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy;

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Plenipotentiary at Athens, Commander of the Order of Saints Maurice and Lazarus, Grand Officer of the Crown of Italy;

HIS MAJESTY THE EMPEROR OF JAPAN:

Mr. Kentaro Otchiai, Jusammi, First Class of the Order of the Rising Sun, Ambassador Extraordinary and Plenipotentiary at Rome;

HIS MAJESTY THE KING OF THE HELLENES:

M. Eleftherios K. Veniselos, formerly President of the Council of Ministers, Grand Cross of the Order of the Savior;

¹ British Treaty Series, No. 16 (1923). See SUPPLEMENT to this JOURNAL for January, 1924, p. 1, for preceding documents.

M. Demetrios Caclamanos, Minister Plenipotentiary at London, Commander of the Order of the Savior;

HIS MAJESTY THE KING OF ROUMANIA:

. M. Constantine I. Diamandy, Minister Plenipotentiary;

M. Constantine Contzesco, Minister Plenipotentiary;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Dr. Miloutine Yovanovitch, Envoy Extraordinary and Minister Plenipotentiary at Berne;

THE GOVERNMENT OF THE GRAND NATIONAL ASSEMBLY OF TURKEY:

Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople;

Dr. Riza Nour-Bey, Minister for Health and for Public Assistance, Deputy for Sinope;

Hassan Bey, formerly Minister, Deputy for Trébizond;

Who, having produced their full powers, found in good and due form, have agreed as follows:—

CHAPTER I.—CONDITIONS OF RESIDENCE AND BUSINESS

ARTICLE 1

The application in Turkey of each of the provisions of this chapter to nationals and corporations of the other contracting Powers is expressly subject to complete reciprocity being accorded to Turkish nationals and corporations in the territories of the said Powers.

Should one of these Powers refuse, in consequence of a provision in its law or for another reason, to accord reciprocity in respect of any such provision, its nationals and corporations will not be entitled to benefit by such provision in Turkey.

For the purposes of this article each of the dominions, colonies and countries under the protection or authority of the contracting Powers will be considered as a separate contracting country.

SECTION I.—ENTRY AND RESIDENCE

ARTICLE 2

In Turkey the nationals of the other contracting Powers will be received and treated, both as regards their persons and property, in accordance with ordinary international law. They will enjoy in Turkey the complete and constant protection of the local law and authorities for their persons, their property, rights and interests. Without prejudice to the provisions respecting immigration, they will have complete freedom to enter and establish themselves in Turkey, and may accordingly come, go and reside there, subject to compliance with the laws and regulations in force.

ARTICLE 3

In Turkey the nationals of the other contracting Powers will have the right to acquire, to possess and to dispose of all kinds of property both

movable and immovable, subject to compliance with the local laws and regulations; they will in particular be able to dispose thereof by sale, exchange, gift, testamentary disposition, or in any other way, and to take possession by inheritance in accordance with the law, or under dispositions *inter vivos* or by will.

ARTICLE 4

The admission in Turkey of nationals of the other contracting Powers to the different forms of commerce, professions and industry, and reciprocally the admission, in the territories of the said Powers, of Turkish nationals to the different forms of commerce, professions and industry, will form the subject of separate conventions to be concluded between Turkey and the said Powers within twelve months from the coming into force of the present convention.

It is understood that, pending the conclusion of the said conventions, the *status quo* as on the 1st January, 1923, will be maintained, and that if any such convention has not been concluded at the end of the said period of twelve months each of the contracting Powers concerned will recover its freedom of action, subject to the rights acquired by individuals before the 1st January, 1923, being respected.

ARTICLE 5

In Turkey, commercial, industrial and financial corporations including transport and insurance corporations, which are regularly incorporated on the territory of any one of the other contracting Powers, shall be recognized.

In all matters relating to their constitution, their legal capacity and their right to sue and be sued, they will be treated in accordance with their national law.

They will have the right to establish themselves in Turkish territory and to engage in all forms of commerce and industry in which nationals of the country where they were incorporated may engage, and which are not forbidden in Turkey to Turkish corporations. They will have the right freely to conduct their affairs in Turkey, subject to compliance with the prescriptions relating to public order, and will enjoy in this respect the same rights as any similar Turkish corporation.

They will have the right to acquire, to possess and to dispose of all kinds of movable property, subject to compliance with the local laws and regulations. They will have a similar right as regards immovable property which is necessary for the operations of the corporation, provided, in this case, that the acquisition of such property does not constitute the object of the corporation's existence.

ARTICLE 6

In Turkey the nationals of the other contracting Powers will not be subject to the laws relating to military service. They will be exempt from any

such service and from any obligation or payment which replaces such service.

Their property may not be expropriated or the use of it denied to them even temporarily, except for reasons of public interest recognized by law as such, and in return for fair compensation to be paid in advance. No expropriation may take place without public notice being previously given.

ARTICLE 7

Turkey reserves the right to expel, in individual cases, nationals of the other contracting Powers, either under the order of a court or in accordance with the laws and regulations relating to public morality, public health or pauperism or for reasons affecting the internal or external safety of the state. The other contracting Powers agree to receive persons thus expelled, and their families, at any time.

The expulsion shall be carried out in conditions complying with the requirements of health and humanity.

SECTION II.—FISCAL CLAUSES

ARTICLE 8

Nationals of the contracting Powers, other than Turkey, shall not be subjected to any charge, tax or impost of any kind or under any description whatsoever, other or higher than those which may be imposed on Turkish nationals, in respect of their stay or residence in Turkish territory, or in respect of the exercise of any form of commerce, profession, industry, enterprise or activity of whatever kind in Turkey which is open to them in accordance with the provisions of Article 4.

The nationals of the said Powers who are established abroad and who, while passing through Turkish territory undertake any business, shall not be subjected to any charge, tax or impost of any kind or under any description whatsoever other or higher than those to which Turkish nationals or foreigners established in Turkey are subjected in respect of an activity of the same kind and importance, in accordance with the fiscal provisions in force in the country.

The property, rights and interests in Turkish territory of the nationals of the said Powers shall not be subjected to any impost, tax or charge, direct or indirect, other or higher than those which may be imposed on the property, rights and interests of Turkish nationals, whether as regards the acquisition, possession or enjoyment of the said property, or as regards its transfer by grant, exchange or succession.

ARTICLE 9

Commercial, industrial or financial corporations, including transport and insurance corporations which are incorporated in accordance with the law of one of the other contracting countries, and which, in accordance with

the provisions of Article 5, establish themselves in Turkey or carry on their affairs there, shall not be subjected to any impost, tax or charge, of any kind or under any description whatsoever, to which corporations of the same kind incorporated under Turkish law are not subjected.

The same provisions apply to associated companies, branches, agencies and other representatives of firms or companies of the said countries which, in accordance with the provisions of Article 5, are established or carry on their affairs in Turkey, it being understood that, when the control of these firms or companies is outside Turkey, the said associated companies, branches, agencies and representatives will only be taxed in proportion to the amount of the capital actually employed in Turkey, or in respect of the profits and revenues which they have actually earned there, these profits and revenues being used to determine the amount of capital employed if it is impossible to verify that capital.

ARTICLE 10

If the Turkish Government establishes any exemptions from fiscal charges, of any kind or under any description whatsoever, these exemptions will be granted to the nationals or companies established in Turkey of the other contracting countries in the same way as to Turkish nationals or to companies established under Turkish law.

This provision cannot be used to support a claim to the benefit of exemptions from charges granted to undertakings established by the state or to, concessionnaires of a public utility service.

ARTICLE 11

In respect of all matters referred to in Articles 8 to 10, provincial or local charges, imposts or taxes, leviable in Turkey on the nationals of the other contracting countries shall not be other or higher than those levied on Turkish nationals.

ARTICLE 12

No forced loan or capital levy shall be imposed in Turkey, even in case of war, on nationals of other contracting countries established in Turkey or carrying on their affairs therein, or on their property, rights and interests situated in Turkish territory, or on corporations, associated companies, branches or agencies constituted under the law of one of the said countries and established in Turkey or carrying on their affairs therein.

ARTICLE 13

The Capitulations having been abolished, Turkey will not grant to the nationals of foreign countries any treatment more favorable than that accorded to her own nationals, and will apply to her nationals and to the nationals of the other contracting parties the principle of equality of treatment as regards the matters referred to in this section.

CHAPTER II.—JURISDICTION

ARTICLE 14

In Turkey the nationals of the other contracting Powers, and reciprocally Turkish nationals in the territories of the said Powers, will have free access to the courts of the country, and may sue and be sued in the same conditions in all respects as nationals of the country, subject to the provisions of Article 18.

ARTICLE 15

Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law.

ARTICLE 16

In matters of personal status, *i.e.*, all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction; in matters relating to succession to personalty, whether by will or on intestacy, and the distribution and winding up of estates; and family law in general, it is agreed between Turkey and the other contracting Powers that, as regards non-Moslem nationals of such Powers in Turkey, the national tribunals or other competent national authorities established in the country of which the party whose personal status is in question will alone have jurisdiction.

The present stipulation does not affect the special attributions of consuls in matters of status in accordance with international law or special agreements which may be concluded, nor the right of Turkish courts to request and receive evidence respecting matters acknowledged above as being within the competence of the national tribunals or authorities of the parties concerned.

By way of exception to the first paragraph of this article, the Turkish courts will also have jurisdiction in the matters referred to therein, if all the parties to the case submit in writing to the jurisdiction of the said courts. In such case the Turkish courts will apply the national law of the parties.

ARTICLE 17

The Turkish Government declares that the Turkish courts will ensure to foreigners in Turkey, both as regards person and property, protection in accordance with international law and the principles and methods generally adopted in other countries.

ARTICLE 18

All questions relating to security for costs, execution of judgments, service of judicial and extra-judicial documents, commissions rogatoires, orders for the payment of costs and expenses, free judicial assistance and imprison-

ment for debt are left to be regulated between Turkey and the other contracting Powers by separate conventions between the states concerned.

CHAPTER III.—FINAL PROVISIONS

ARTICLE 19

The contracting Powers reserve the right of declaring, at the time of the coming into force of the present convention, that its provisions do not apply to all or any of their dominions enjoying responsible government, or their colonies, protectorates, possessions or territories beyond the sea subject to their sovereignty or authority, and in this case Turkey will be released from her obligations under the present convention to the said Dominions, colonies, protectorates, possessions and territories.

The said Powers may, however, adhere subsequently in the name of every dominion enjoying responsible government, colony, protectorate, possession or territory in respect of which they have, in accordance with the terms of the present convention, made a declaration of exclusion.

ARTICLE 20

The present convention is concluded for a period of seven years from its coming into force.

If the convention is not denounced by one of the high contracting parties at least one year before the expiry of the said period, it will remain in force until denounced. Such denunciation will take effect a year after notice of it is given.

In the event of the convention being denounced by any one of the contracting Powers other than Turkey, the denunciation will only take effect as between such Power and Turkey.

Turkey will be entitled to denounce the convention either as regards all the other contracting Powers, or as regards only one of them; in the latter event, the convention will remain in force as regards the rest.

ARTICLE 21

The present convention shall be ratified.

The ratifications shall be deposited at Paris as soon as possible.

It shall enter into force in the same way as the treaty of peace signed this day.

In faith whereof the above-named plenipotentiaries have signed the present convention.

Done at Lausanne, the 24th July, 1923, in a single copy which will be deposited in the archives of the Government of the French Republic, who will transmit a certified copy to each of the signatory Powers.

[L.S.] HORACE RUMBOLD.

[L.S.] CONST. DIAMANDY.

[L.S.] PELLÉ.

[L.S.] CONST. CONTZESCO.

[L.S.] GARRONI.

[]

[L.S.] G. C. MONTAGNA.

[L.S.] M. ISMET.

[L.S.] K. OTCHIAI.

[L.S.] DR. RIZA NOUR.

[L.S.] E. K. VENISÉLOS.

[L.S.] HASSAN.

[L.S.] D. CACLAMAÑOS.

V. COMMERCIAL CONVENTION

The British Empire, France, Italy, Japan, Greece, Roumania and the Serb-Croat-Slovene State, of the one part, and Turkey, of the other part;

Animated with a desire to establish their economic relations on a basis of international law and under conditions most likely to encourage commerce and to facilitate trade, have resolved to conclude a convention for this purpose, and have appointed as their Plenipotentiaries:—

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Sir Horace George Montagu Rumbold, Baronet, G.C.M.G., High Commissioner at Constantinople;

THE PRESIDENT OF THE FRENCH REPUBLIC:

General Maurice Pellé, Ambassador of France, High Commissioner of the Republic in the East, Grand Officer of the National Order of the Legion of Honor;

HIS MAJESTY THE KING OF ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom, Ambassador of Italy, High Commissioner at Constantinople, Grand Cross of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy;

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Plenipotentiary at Athens, Commander of the Order of Saints Maurice and Lazarus, Grand Officer of the Crown of Italy;

HIS MAJESTY THE EMPEROR OF JAPAN:

Mr. Kentaro Otchiai, Jusammi, First Class of the Order of the Rising Sun, Ambassador Extraordinary and Plenipotentiary at Rome;

HIS MAJESTY THE KING OF THE HELLENES:

M. Eleftherios K. Veniselos, formerly President of the Council of Ministers, Grand Cross of the Order of the Savior;

M. Demetrios Caclamanos, Minister Plenipotentiary at London, Commander of the Order of the Savior;

HIS MAJESTY THE KING OF ROUMANIA:

M. Constantine I. Diamandy, Minister Plenipotentiary;

M. Constantine Contzesco, Minister Plenipotentiary;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Dr. Miloutine Yovanovitch, Envoy Extraordinary and Minister Plenipotentiary at Berne;

THE GOVERNMENT OF THE GRAND NATIONAL ASSEMBLY OF TURKEY:

Ismet Pasha, Minister for Foreign Affairs, Deputy for Adrianople;

Dr. Riza Nour Bey, Minister for Health and for Public Assistance,
Deputy for Sinope;

Hassan Bey, formerly Minister, Deputy for Trebizond;

Who, having produced their full powers, found in good and due form,
have agreed as follows:—

SECTION I

ARTICLE 1

From the coming into force of the present convention, the tariffs applicable on the importation into Turkey of the produce or manufactures originating and emanating from the territories of the other contracting countries shall be those of the Turkish specific tariff which came into operation on the 1st September, 1916.

ARTICLE 2

The duties prescribed by the Turkish tariff of the 1st September, 1916, in Turkish paper money, will be subjected to coefficients of increase periodically adjusted according to the rate of exchange under the conditions hereinafter provided.

These coefficients shall be those which were in force on the 1st March, 1923. Nevertheless, the articles set out in the annexed Schedule 1 shall be subjected to the coefficient 9.

The coefficients referred to above shall be adjusted in accordance with the rate of exchange as provided by the following rules:—

These coefficients having been determined at a time when the pound sterling represented 745 paper piastres, if the Turkish pound shows an average increase of more than thirty per cent. over this rate during the month preceding the coming into force of this convention, the coefficients twelve and nine will be reduced proportionately to the average rate of exchange for that month; the coefficient will remain in force, as thus adjusted, for the following three months; at the expiration of that period of three months, the coefficient will, should the case arise, be readjusted in accordance with the average rate of exchange of the last month of the period.

In the same way, if the Turkish pound shows an average decrease of more than thirty per cent. compared with the initial rate of 745 piastres for a pound sterling during the month preceding the coming into force of this convention, the coefficients twelve and nine may be increased proportionately to the average rate of exchange for that month; the coefficient will remain in force, as thus adjusted, for the following three months; at the expiration of that period of three months, the coefficient will, should the case arise, be readjusted in accordance with the average rate of exchange of the last month of the period.

The coefficient five may be increased, in the event of a decrease in value of the Turkish pound, in the same conditions as the coefficients twelve and nine, but, in the event of an increase in value of the Turkish pound, that coefficient need only be reduced from the time when the pound sterling is worth less than five Turkish pounds paper.

In the event of monetary reform, the various coefficients fixed above will be modified to the extent of the difference between the new and the old currency in such a way as not to alter the incidence of customs duties.

ARTICLE 3

Turkey undertakes to abolish from the coming into force of the present convention, and not to re-establish during its continuance, all prohibitions of import and export, except those which may be necessary:

- (1) to maintain the resources indispensable for the food of the people, and to safeguard the economic activity of the nation;
- (2) to ensure the security of the state;
- (3) to protect persons, animals and plants against contagious diseases, epizooties and epiphyties;
- (4) to prevent the use of opium and other poisons;
- (5) to prohibit the import of alcoholic products, the use of which is forbidden in Turkey;
- (6) to prevent the export of gold money or gold metal;
- (7) to establish or support state monopolies.

Subject to equitable reciprocity being accorded to her by each of the other contracting Powers in accordance with its legislation, Turkey undertakes to apply the prohibitions without discrimination of any kind, and in the event of her granting exemptions or licences in respect of prohibited produce, not to favor in any way the trade of any one contracting Power to the prejudice of the trade of any other contracting Power, or to favor in any way the trade of any non-contracting Power to the prejudice of the trade of any contracting Power.

ARTICLE 4

Subject to reciprocity, no consumption or excise duty shall be applicable in Turkey to goods originating or emanating from the other contracting countries except to the extent to which it is exacted in respect of identical or similar articles produced in Turkey.

Turkey may, however, continue to exact, under the same conditions of equality between her nationals and the nationals of the other contracting countries, the consumption duties set out in the schedule contained in Annex II in respect of the products specified in that schedule.

Subject to reciprocity, octroi duties and any other taxes exacted by local authorities will, if they are imposed on articles produced in Turkey, be applied without discrimination between Turkish products and products orig-

inating or emanating from the other contracting countries, and, if they are imposed on articles not produced in Turkey, will similarly be applied, without discrimination of any kind, to all identical or similar foreign products, whatever may be their origin.

ARTICLE 5

Subject to an equitable reciprocity being accorded to Turkey by each of the other contracting Powers in accordance with its legislation, every export duty, which Turkey may have imposed or may impose on any goods, natural or manufactured, shall be applied equally whatever the country of destination. No discrimination to the prejudice of the commerce of any one of the other contracting Powers shall be established by any means.

ARTICLE 6

Turkey will accord to the other contracting parties the benefit of any more favorable treatment in respect of the matters referred to in Articles 1 to 5 which she may grant to any other country, except such special advantages as regards tariffs or generally in regard to all other commercial matters which she may grant to any one of the territories detached from Turkey under the treaty of peace signed this day, or, as regards frontier trade, to a limitrophe state.

ARTICLE 7

In order to determine the country of origin of imported goods, Turkey and any of the other contracting Powers may respectively require the production by the importer of an official certificate stating that the article imported is the national produce or manufacture of the said country, or that it should be so considered having regard to the transformation which it has undergone in that country.

Certificates of origin in accordance with the form annexed to this section numbered III will be granted by the Ministry of Commerce or of Agriculture, or by the Chamber of Commerce to which the consignor belongs, or by any other authority or association which may be agreed upon by the country of destination. They will be authenticated by a diplomatic or consular representative of the country of destination.

Parcel post packages will be exempt from the requirement of a certificate of origin when the country of destination recognizes that no transaction of a commercial character is involved.

ARTICLE 8

The benefit of the provisions of this section cannot be claimed by any of the contracting Powers which does not grant to Turkey during the whole period of the convention a treatment as favorable as that which it grants to any other foreign country.

ANNEX I

LIST OF ARTICLES SUBJECT TO THE COEFFICIENT 9

Number
in Tariff

65.....	Potatoes.
69.....	Oranges.
121.....	Confectionery (sweetmeats).
130.....	Mineral waters.
178.....	Dressed leather.
180.....	Pigskin.
185, 187, 188.....	Footwear.
192.....	Gloves.
200, 201.....	Peltry, raw or prepared.
217, 218.....	Furniture.
273, 274, 275.....	Cotton, embroidery, lace and ribbons.
302.....	Silk waste.
305.....	Gauze, &c.
306.....	Silk tulle, &c.
308.....	Silk tissue.
311, 312.....	Silk hosiery.
314.....	Silk passementerie.
324.....	Woollen shawls and belts.
339.....	Clothing.
348.....	Sunshades, umbrellas, parasols, &c.

ANNEX II

CONSUMPTION TAXES

Tea.....	40	piastres per kilo.
Coffee.....	20	" "
Petroleum.....	6	" "
Rice.....	10	" "
Margarine, oleomargarine and other animal fats.....	80	" "
Candles, stearic.....	30	" "
Ordinary soap.....	5	" "
Sacks, old and new.....	5	" "
Spices.....	30	" "
Matches.....	$\frac{1}{2}$	piastre per box of 60 matches.
Wax matches.....	1	" " "
Cigarette paper.....	1	piastre per 50 sheets.
Tinder boxes.....	25	piastres per tinder box.
Sugar.....	15	" kilo.

Biscuits.....	} Subject to a consumption tax according to percentage of sugar they contain.
Chocolate.....	
Condensed milk.....	
Sweet stuffs and glucose.....	
Non-alcoholic beverages (gaseous and lemonades).....	
Other products containing sugar..	
Tombac.....	40 piastres per kilo.

ANNEX III

FORM OF CERTIFICATE OF ORIGIN

We (authority which grants the certificates)¹ certify that—

Mr.....

	{ Producer or manufacturer, Agent of Mr..... Residing at..... Authorized dealer,	} ²
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residing at.....

has declared before us, on his responsibility, that the goods specified below are of (Turkish or.....) origin or manufacture in accordance with reliable documents which have been produced to us by the consignor.³ These goods are sent to.....to the order of Mr..... merchant or trader at..... by (land or ship.....)

Number and Nature of Packages	Marks Number	Gross and Net Weight (in kilogrammes) or Measure of Capacity and Value	Nature of the Goods

Certified on my responsibility, the.....
 (Signature of the declarant.)

¹ The certificates will be granted either by the Ministries of Commerce or Agriculture or by the Chamber of Commerce to which the consignor belongs, or by any other authority or association which may be agreed upon by the country of destination.

² Strike out the words which are inapplicable.

³ When the certificate is obtained by the producer or manufacturer, or his agent, the words "in accordance with reliable documents which have been produced to us by the consignor" should be struck out.

Confirmed by us (authority which grants the certificate), who attest also that the sale of the goods specified above has been actually concluded in this country.

(Date and signature of the authority which grants the certificate.)

Seen at the Consulate of for verification of this signature.

(Date, signature and seal of the Consulate.)

SECTION II

ARTICLE 9

Turkey undertakes, on condition that reciprocity is accorded in this matter, to grant to the ships of the other contracting Powers a treatment equal to that which she grants to national ships, or any more favorable treatment that she grants or may grant to the ships of any other Power.

Turkey retains, as regards each of the other contracting Powers, and each of these Powers retains as regards Turkey the right of reserving to the national flag fishing, maritime cabotage, that is to say, transport by sea of goods and passengers embarked in one port of its territory for another port in the same territory, and port services, that is to say, towage, pilotage and all interior services of whatever nature they may be.

ARTICLE 10

Subject to the exceptions referred to in the preceding article with respect to fishing, maritime cabotage and port services, a treatment equal to that granted to national ships will be granted reciprocally by Turkey on the one hand and by each of the other contracting parties on the other hand as regards the right to import or export goods of every description or to transport passengers going to or coming from the country and the enjoyment of all facilities with regard to stationing, loading and unloading of vessels at ports, docks, quays and roads.

There shall also be an absolute equality, subject to the same condition of reciprocity, as regards dues, charges and payments of all kinds levied on ships, such as sanitary dues, port, quay, harbor, pilotage, quarantine, light-house and other similar dues levied in the name of or for the profit of the government, public functionaries, private individuals, corporations or establishments of any kind.

Turkey also undertakes, on condition of reciprocity, not to subject imported or exported goods to any differential due, surtax, or increase of any nature or kind based on the flag of the ship by which the goods are imported or exported, on the ports of arrival or departure, on the voyage of the ship or the ports at which it has called, the dues and taxes leviable on goods imported or exported being determined only on their origin or their destination,

and being applied equally as regards all the other contracting Powers in accordance with the provisions of Section I.

ARTICLE 11

All classes of certificates or documents relating to vessels, their cargoes and passengers which were recognized as valid by Turkey before the war or which may hereafter be recognized as valid by the principal maritime states shall be recognized by Turkey, as regards the vessels belonging to the other contracting Powers, as valid and as equivalent to the corresponding certificates issued to Turkish vessels.

These provisions will only have effect if the certificates and documents delivered by Turkey to Turkish vessels, in conditions equivalent to those adopted in the principal maritime countries, are regarded by the other contracting Powers as equivalent to the certificates and documents delivered by them.

SECTION III

ARTICLE 12

Turkey undertakes, on condition of reciprocity, to adopt all the necessary legislative and administrative measures, and to allow access to the courts in order to protect goods the produce or manufacture of any one of the other contracting Powers from all forms of unfair competition in commercial transactions.

Turkey undertakes, also on condition of reciprocity, to prohibit and repress by appropriate remedies the importation, exportation, manufacture, distribution, sale or offering for sale in her territory of all goods bearing upon themselves or their get-up or wrappings any marks, names, devices or descriptions whatsoever which are calculated to convey, directly or indirectly, false indications of the origin, type, nature or special characteristics of such goods.

ARTICLE 13

Turkey undertakes, on condition that reciprocity is accorded in these matters, to respect any law or any administrative or judicial decision given in conformity with such law in force in any other contracting state and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of products which derive their special qualities from the soil or the climate, or the conditions under which the use of any such appellation may be permitted; and the importation, exportation, manufacture, distribution, sale or offering for sale of products or articles bearing regional appellations inconsistent with such laws or orders shall be prohibited by Turkey and repressed by the measures prescribed by Article 12.

ARTICLE 14

Turkey undertakes, within a period of twelve months from the coming into force of the present convention:

- (1) To accede in the prescribed form to the International Convention of Paris of the 20th March, 1883, for the protection of industrial property, revised at Washington on the 2nd of June, 1911;
- (2) To accede also to the International Convention of Berne of the 9th September, 1886, for the protection of literary and artistic works, revised at Berlin on the 13th November, 1908, and the additional protocol of Berne of the 20th March, 1914, relating to the protection of literary and artistic works.

The other Powers signatory to the present convention will raise no objection, while it remains in force, to the reserve which Turkey proposes to make with regard to the provisions of the aforesaid conventions and protocol respecting the right of translation into the Turkish language, if the other Powers, co-signatories of those conventions and protocol, have not themselves raised any objection to the said reserve during the year following the coming into force of the present convention.

In the event of the Powers signatory to the present convention not maintaining their adhesion to the Turkish reserve respecting the rights of translation, Turkey will not be bound to maintain her adhesion to the conventions and protocol mentioned above;

- (3) Within the same period to recognize and protect by effective legislation, in accordance with the principles of the said conventions, the industrial, literary and artistic property of the nationals of the other contracting Powers.

ARTICLE 15

Special conventions between the countries interested shall determine all questions relative to the records, registers and designs in connection with the services relating to industrial, literary and artistic property, and their eventual transmission or communication by the Turkish offices to the offices of the states in favor of which territory is detached from Turkey.

GENERAL PROVISIONS

ARTICLE 16

The contracting Powers reserve the right of declaring at the time of the coming into force of the present convention, that its provisions do not apply to all or any of their dominions enjoying responsible government, of their colonies, protectorates, possessions or territories beyond the sea subject to their sovereignty or authority, and in this case Turkey will be released from

her obligations under the present convention to the said dominions, colonies, protectorates, possessions and territories.

The said Powers may, however, accede subsequently in the name of every dominion enjoying responsible government, colony, protectorate, possession or territory for which they have, in accordance with the terms of the present convention, made a declaration of exclusion.

ARTICLE 17

Natural and manufactured products coming from or going to Libya will receive in Turkey the same treatment as Italian natural or manufactured products. Natural and manufactured products coming from or going to Turkey will receive in Libya most-favored-nation treatment.

ARTICLE 18

The present convention will remain in force for a period of five years.

As regards Section I, Turkey on the one hand, and Greece, Roumania and the Serb-Croat-Slovene State on the other hand, recognizing the necessity of settling a new basis for their commercial exchanges within a shorter period, agree to recognize in each other's favor the right to denounce this convention at any time after the termination of the first period of thirty months; the convention will cease to have effect six months after the denunciation.

Turkey on the one hand and each of the other contracting Powers on the other hand undertake at any time during the periods hereinbefore fixed for the duration of the convention, on request being made, to begin negotiations for new commercial treaties, and to proceed actively with those negotiations so that they may be concluded before the expiration of the said periods.

If the said negotiations have not been concluded before the expiration of the aforesaid periods, each of the high contracting parties will resume its freedom of action.

ARTICLE 19

The present convention shall be ratified.

The ratifications shall be deposited at Paris as soon as possible.

It shall enter into force in the same way as the treaty of peace signed this day.

In faith whereof, the above-mentioned plenipotentiaries have signed the present convention.

Done at Lausanne, the 24th July, 1923, in a single copy, which will be deposited in the archives of the Government of the French Republic, which will transmit a certified copy thereof to each of the signatory powers.

[L.S.] HORACE RUMBOLD.

[L.S.] CONST. DIAMANDY.

[L.S.] PELLÉ.

[L.S.] CONST. CONTZESCO.

[L.S.] GARRONI.	[]
[L.S.] G. C. MONTAGNA.	[L.S.] M. ISMET.
[L.S.] K. OTCHIAL.	[L.S.] DR. RIZA NOUR.
[L.S.] E. K. VENISÉLOS.	[L.S.] HASSAN.
[L.S.] D. CACLAMANOS.	

VI. CONVENTION CONCERNING THE EXCHANGE OF GREEK AND TURKISH POPULATIONS

Signed at Lausanne, January 30, 1923

The Government of the Grand National Assembly of Turkey and the Greek Government have agreed upon the following provisions:

ARTICLE 1

As from the 1st May, 1923, there shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory.

These persons shall not return to live in Turkey or Greece respectively without the authorization of the Turkish Government or of the Greek Government respectively.

ARTICLE 2

The following persons shall not be included in the exchange provided for in Article 1:—

- (a) The Greek inhabitants of Constantinople.
- (b) The Moslem inhabitants of Western Thrace.

All Greeks who were already established before the 30th October, 1918, within the areas under the Prefecture of the City of Constantinople, as defined by the law of 1912, shall be considered as Greek inhabitants of Constantinople.

All Moslems established in the region to the east of the frontier line laid down in 1913 by the Treaty of Bucharest shall be considered as Moslem inhabitants of Western Thrace.

ARTICLE 3

Those Greeks and Moslems who have already, and since the 18th October, 1912, left the territories the Greek and Turkish inhabitants of which are to be respectively exchanged, shall be considered as included in the exchange provided for in Article 1.

The expression "emigrant" in the present convention includes all physical and juridical persons who have been obliged to emigrate or have emigrated since the 18th October, 1912.

ARTICLE 4

All able-bodied men belonging to the Greek population, whose families have already left Turkish territory, and who are now detained in Turkey, shall constitute the first instalment of Greeks sent to Greece in accordance with the present convention.

ARTICLE 5

Subject to the provisions of Articles 9 and 10 of the present convention, the rights of property and monetary assets of Greeks in Turkey or Moslems in Greece shall not be prejudiced in consequence of the exchange to be carried out under the present convention.

ARTICLE 6

No obstacle may be placed for any reason whatever in the way of the departure of a person belonging to the populations which are to be exchanged. In the event of an emigrant having received a definite sentence of imprisonment, or a sentence which is not yet definitive, or of his being the object of criminal proceedings, he shall be handed over by the authorities of the prosecuting country to the authorities of the country whither he is going, in order that he may serve his sentence or be brought to trial.

ARTICLE 7

The emigrants will lose the nationality of the country which they are leaving, and will acquire the nationality of the country of their destination, upon their arrival in the territory of the latter country.

Such emigrants as have already left one or other of the two countries and have not yet acquired their new nationality, shall acquire that nationality on the date of the signature of the present convention.

ARTICLE 8

Emigrants shall be free to take away with them or to arrange for the transport of their movable property of every kind, without being liable on this account to the payment of any export or import duty or any other tax.

Similarly, the members of each community (including the personnel of mosques, tekkes, meddresses, churches, convents, schools, hospitals, societies, associations and juridical persons, or other foundations of any nature whatever) which is to leave the territory of one of the contracting states under the present convention, shall have the right to take away freely or to arrange for the transport of the movable property belonging to their communities.

The fullest facilities for transport shall be provided by the authorities of the two countries, upon the recommendation of the Mixed Commission provided for in Article 11.

Emigrants who may not be able to take away all or part of their movable

property can leave it behind. In that event, the local authorities shall be required to draw up, the emigrant in question being given an opportunity to be heard, an inventory and valuation of the property left by him. *Procès-verbaux* containing the inventory and the valuation of the movable property left by the emigrant shall be drawn up in four copies, one of which shall be kept by the local authorities, the second transmitted to the Mixed Commission provided for in Article 11 to serve as the basis for the liquidation provided for by Article 9, the third shall be handed to the government of the country to which the emigrant is going, and the fourth to the emigrant himself.

ARTICLE 9

Immovable property, whether rural or urban, belonging to emigrants, or to the communities mentioned in Article 8, and the movable property left by these emigrants or communities, shall be liquidated in accordance with the following provisions by the Mixed Commission provided for in Article 11.

Property situated in the districts to which the compulsory exchange applies and belonging to religious or benevolent institutions of the communities established in a district to which the exchange does not apply, shall likewise be liquidated under the same conditions.

ARTICLE 10

The movable and immovable property belonging to persons who have already left the territory of the high contracting parties and are considered, in accordance with Article 3 of the present convention, as being included in the exchange of populations, shall be liquidated in accordance with Article 9. This liquidation shall take place independently of all measures of any kind whatever, which, under the laws passed and the regulations of any kind made in Greece and in Turkey since the 18th October, 1912, or in any other way, have resulted in any restriction on rights of ownership over the property in question, such as confiscation, forced sale, &c. In the event of the property mentioned in this article or in Article 9 having been submitted to a measure of this kind, its value shall be fixed by the Commission provided for in Article 11, as if the measures in question had not been applied.

As regards expropriated property, the Mixed Commission shall undertake a fresh valuation of such property, if it has been expropriated since the 18th October, 1912, having previously belonged to persons liable to the exchange of populations in the two countries, and is situated in territories to which the exchange applies. The Commission shall fix for the benefit of the owners such compensation as will repair the injury which the Commission has ascertained. The total amount of this compensation shall be carried to the credit of these owners and to the debit of the government on whose territory the expropriated property is situated.

In the event of any persons mentioned in Articles 8 and 9 not having received the income from property, the enjoyment of which they have lost in one way or another, the restoration of the amount of this income shall be guaranteed to them on the basis of the average yield of the property before the war, and in accordance with the methods to be laid down by the Mixed Commission.

The Mixed Commission provided for in Article 11, when proceeding to the liquidation of *Wakf* property in Greece and of the rights and interests connected therewith, and to the liquidation of similar foundations belonging to Greeks in Turkey, shall follow the principles laid down in previous treaties with a view to fully safeguarding the rights and interests of these foundations and of the individuals interested in them.

The Mixed Commission provided for in Article 11 shall be entrusted with the duty of executing these provisions.

ARTICLE 11

Within one month from the coming into force of the present convention a Mixed Commission shall be set up in Turkey or in Greece consisting of four members representing each of the high contracting parties, and of three members chosen by the Council of the League of Nations from among nationals of Powers which did not take part in the war of 1914-1918. The presidency of the Commission shall be exercised in turn by each of these three neutral members.

The Mixed Commission shall have the right to set up, in such places as it may appear to them necessary, sub-commissions working under its order. Each such sub-commission shall consist of a Turkish member, a Greek member and a neutral president to be designated by the Mixed Commission. The Mixed Commission shall decide the powers to be delegated to the sub-commission.

ARTICLE 12

The duties of the Mixed Commission shall be to supervise and facilitate the emigration provided for in the present convention, and to carry out the liquidation of the movable and immovable property for which provision is made in Articles 9 and 10.

The Commission shall settle the methods to be followed as regards the emigration and liquidation mentioned above.

In a general way the Mixed Commission shall have full power to take the measures necessitated by the execution of the present convention and to decide all questions to which this convention may give rise.

The decisions of the Mixed Commission shall be taken by a majority.

All disputes relating to property, rights and interests which are to be liquidated shall be settled definitely by the Commission.

ARTICLE 13

The Mixed Commission shall have full power to cause the valuation to be made of the movable and immovable property which is to be liquidated under the present convention, the interested parties being given a hearing or being duly summoned so that they may be heard.

The basis for the valuation of the property to be liquidated shall be the value of the property in gold currency.

ARTICLE 14

The Commission shall transmit to the owner concerned a declaration stating the sum due to him in respect of the property of which he has been dispossessed, and such property shall remain at the disposal of the government on whose territory it is situated.

The total sums due on the basis of these declarations shall constitute a government debt from the country where the liquidation takes place to the government of the country to which the emigrant belongs. The emigrant shall in principle be entitled to receive in the country to which he emigrates, as representing the sums due to him, property of a value equal to and of the same nature as that which he has left behind.

Once every six months an account shall be drawn up of the sums due by the respective governments on the basis of the declarations as above.

When the liquidation is completed, if the sums of money due to both sides correspond, the accounts relating thereto shall be balanced. If a sum remains due from one of the governments to the other government after a balance has been struck, the debit balance shall be paid in cash. If the debtor government requests a postponement in making this payment, the Commission may grant such postponement, provided that the sum due be paid in three annuities at most. The Commission shall fix the interest to be paid during the period of postponement.

If the sum to be paid is fairly large and requires longer postponement, the debtor government shall pay in cash a sum to be fixed by the Mixed Commission, up to a maximum of twenty per cent. of the total due, and shall issue in respect of the balance loan certificates bearing such interest as the Mixed Commission may fix, to be paid off within twenty years at most. The debtor government shall assign to the service of these loans pledges approved by the Commission, which shall be administered and of which the revenues shall be encashed by the International Commission in Greece and by the Council of the Public Debt at Constantinople. In the absence of agreement in regard to these pledges, they shall be selected by the Council of the League of Nations.

ARTICLE 15

With a view to facilitating emigration, funds shall be advanced to the Mixed Commission by the states concerned, under conditions laid down by the said Commission.

ARTICLE 16

The Turkish and Greek Governments shall come to an agreement with the Mixed Commission provided for in Article 11 in regard to all questions concerning the notification to be made to persons who are to leave the territory of Turkey and Greece under the present convention, and concerning the ports to which these persons are to go for the purpose of being transported to the country of their destination.

The high contracting parties undertake mutually that no pressure direct or indirect shall be exercised on the populations which are to be exchanged with a view to making them leave their homes or abandon their property before the date fixed for their departure. They likewise undertake to impose on the emigrants who have left or who are to leave the country no special taxes or dues. No obstacle shall be placed in the way of the inhabitants of the districts excepted from the exchange under Article 2 exercising freely their right to remain in or return to those districts and to enjoy to the full their liberties and rights of property in Turkey and in Greece. This provision shall not be invoked as a motive for preventing the free alienation of property belonging to inhabitants of the said regions which are excepted from the exchange, or the voluntary departure of those among these inhabitants who wish to leave Turkey or Greece.

ARTICLE 17

The expenses entailed by the maintenance and working of the Mixed Commission and of the organizations dependent on it shall be borne by the governments concerned in proportions to be fixed by the Commission.

ARTICLE 18

The high contracting parties undertake to introduce in their respective laws such modifications as may be necessary with a view to ensuring the execution of the present convention.

ARTICLE 19

The present convention shall have the same force and effect as between the high contracting parties as if it formed part of the treaty of peace to be concluded with Turkey. It shall come into force immediately after the ratification of the said treaty by the two high contracting parties.

In faith whereof, the undersigned plenipotentiaries, whose respective full Powers have been found in good and due form, have signed the present convention.

Done at Lausanne, the 30th January, 1923, in three copies, one of which shall be transmitted to the Greek Government, one to the Government of the Grand National Assembly of Turkey, and the third shall be deposited in the archives of the Government of the French Republic, which shall de-

liver certified copies to the other Powers signatory of the treaty of peace with Turkey.

[L.S.] E. K. VENISELOS.

[L.S.] DR. RIZA NOUR.

[L.S.] D. CACLAMANOS.

[L.S.] HASSAN.

[L.S.] ISMET.

PROTOCOL

The undersigned Turkish plenipotentiaries, duly authorized to that effect, declare that, without waiting for the coming into force of the convention with Greece of even date, relating to the exchange of the Greek and Turkish populations, and by way to exception to Article 1 of that convention, the Turkish Government, on the signature of the treaty of peace, will release the able-bodied men referred to in Article 4 of the said convention, and will provide for their departure.

Done at Lausanne, the 30th January, 1923.

ISMET.

DR. RIZA NOUR.

HASSAN.

VII. AGREEMENT BETWEEN GREECE AND TURKEY RESPECTING THE RECIPROCAL RESTITUTION OF INTERNED CIVILIANS AND THE EXCHANGE OF PRISONERS OF WAR

Signed at Lausanne, January 30, 1923

The undersigned Turkish and Greek Plenipotentiaries, acting in accordance with their respective full powers, found in good and due form, have agreed as follows, with a view to ensuring the reciprocal restitution of interned civilians at present detained in Greece and in Turkey, and for the exchange of prisoners of war.

CHAPTER I.—INTERNED CIVILIANS

ARTICLE 1

Turkish hostages and civilian prisoners at present detained in Greece will be repatriated by the Greek Government. The latter will in principle cause persons emanating from Anatolia to be transported to Smyrna and those emanating from Thrace to Constantinople.

The restitution of these persons, who shall be checked on their embarkation in Greece, shall in principle begin seven days after the signature of the present agreement. The restitution will be completed as follows:

- (a.) Within not more than two weeks, in so far as persons figuring on lists furnished by the Greek Government are concerned.
- (b.) With the least possible delay, in so far as persons who have to be sought and who figure on lists furnished by the Turkish Government are concerned.

ARTICLE 2

Greek hostages and civilian prisoners, who may be detained by the Turks, shall be collected at Smyrna or Constantinople by the Turkish Government, in such a manner that their repatriation may take place immediately after that of the Turkish civilian hostages mentioned in paragraph (a) of Article 1, and in such a manner that the repatriation of persons who have to be sought may take place with the least possible delay.

ARTICLE 3

The lists of persons to be repatriated, which have been furnished by the Turkish and Greek Governments respectively, shall be completed later.

CHAPTER II.—PRISONERS OF WAR

ARTICLE 4

As soon as possible after the date on which the Greek Government shall have restored to the Turkish Government the Turkish civilian hostages mentioned in paragraph (a) of Article 1, and within a period not exceeding fifteen days from that date, Greece shall restore to Turkey and shall transport to Smyrna simultaneously all the Turkish prisoners of war detained by her.

Turkey shall thereupon restore to Greece an equivalent number of Greek prisoners of war, officer for officer, soldier for soldier. These prisoners of war will be collected by the Turkish Government at such time and in such places, that they may be repatriated on the return voyage of the Greek vessels which brought the Turkish prisoners of war.

The remainder of the Greek prisoners of war shall be repatriated by the Turkish Government immediately after the signature of peace and within three weeks from the date of that signature.

ARTICLE 5

With the object of allaying animosity, the Greek and Turkish Governments undertake respectively to extend the benefit of the amnesty to all prisoners of war and interned civilians detained by them, both those who are awaiting trial or undergoing sentence for crimes or offences against the ordinary law, and those who are awaiting trial or undergoing sentence for offences against discipline; the two governments agree to repatriate such persons without distinction and irrespective of the completion of their sentence, or of the proceedings pending against them.

CHAPTER III.—COMMISSION FOR THE EXECUTION OF THIS AGREEMENT

ARTICLE 6

An International Commission comprising three representatives of the Red Cross societies, nationals of states not having taken part in the war of

1914-18, and a representative of the Greek and Turkish Governments respectively, shall be entrusted with the task of directing the operations connected with the restitution of the hostages and civilian prisoners and the exchange of prisoners of war, under the conditions prescribed in Chapters I and II above. This Commission shall settle the methods by which these operations shall be effected, and shall supervise the execution thereof. The Commission shall be in particular entrusted with the duty of—

- (a.) Receiving from the Greek and Turkish authorities at the ports of embarkation the hostages and prisoners to be repatriated, verifying their number and identity, effecting the surrender of those hostages and prisoners to the Turkish and Greek authorities at the points of disembarkment.
- (b.) Settling in accordance with the Greek and Turkish Governments the transport from the points of embarkation of the Turkish and Greek hostages and prisoners to be repatriated. The Greek Government shall furnish with this object the necessary means of maritime transport.
- (c.) Proceeding with the collaboration of the Greek and Turkish Governments and authorities with all researches and enquiries necessary to establish the fate of civilian hostages and of prisoners of war claimed by one or other government and not handed over.

The governments concerned undertake to furnish with this object all assistance to the Commission and to grant it all facilities.

ARTICLE 7

The expenses of the maintenance and of the work of the Commission shall be borne in equal parts by the Greek and Turkish governments.

The present agreement will enter into force at once.

Done in triplicate at Lausanne, the 30th day of January, 1923.

[L.S.] E. K. VENISELOS.

[L.S.] DR. RIZA NOUR.

[L.S.] D. CACLAMANOS.

[L.S.] HASSAN.

[L.S.] ISMET.

VIII. DECLARATION OF AMNESTY

The Powers signatory of the treaty of peace signed this day being equally desirous to cause the events which have troubled the peace in the East to be forgotten,

The undersigned, acting in virtue of their full powers, have agreed to make the following declaration:

I

No person who inhabits or who has inhabited Turkey, and reciprocally no person who inhabits or who has inhabited Greece, shall be disturbed or

molested in Turkey and reciprocally in Greece, under any pretext whatsoever, on account of any military or political action taken by him, or any assistance of any kind given by him to a foreign Power signatory of the treaty of peace signed this day, or to the nationals of such Power, between the 1st August, 1914, and the 20th November, 1922.

II

Similarly no inhabitant of the territories detached from Turkey under the said treaty of peace shall be disturbed or molested either on account of his political or military attitude against or in favor of Turkey during the period from the 1st August, 1914, to the 20th November, 1922, or of the determination of his nationality under the said treaty.

III

Full and complete amnesty shall be respectively granted by the Turkish Government and by the Greek Government for all crimes or offences committed during the same period which were evidently connected with the political events which have taken place during that period.

IV

Turkish nationals, and reciprocally nationals of the other Powers signatory of the treaty of peace signed this day who may have been arrested, prosecuted or sentenced by the authorities of the said Powers or by the Turkish authorities respectively, for reasons of a political or military nature previous to the 20th November, 1922, on territory which remains Turkish in accordance with the said treaty of peace, shall benefit from the amnesty, and, if they are detained, shall be handed over to the authorities of the states of which they are the nationals. This stipulation is similarly applicable to Turkish nationals arrested, prosecuted or sentenced by the authorities of the Powers who have occupied a portion of the above-mentioned territory even for a transgression of the ordinary law committed before that date, and even if they have been removed from Turkey, excepting those who have committed, against a person belonging to the armies of occupation, an assault which has entailed death or a grievous wound.

V

All sentences pronounced for the above reasons shall be annulled, and any proceedings already instituted shall be stayed.

VI

The Turkish Government, sharing the desire for general pacification with which all the Powers are animated, declare their intention not to contest the measures carried out under the auspices of the Allied Powers during the period between the 20th October, 1918, and the 20th November, 1922,

with the object of re-establishing families scattered owing to the war and of replacing legitimate proprietors in possession of their goods.

However, this intention does not exclude the possibility of any revision of the above-mentioned measures in the event of a request to that effect being made by the interested parties. Claims respecting persons and goods shall be examined by a commission composed of a delegate of the Red Crescent and a delegate of the Red Cross. In the event of a dispute, these delegates will choose an umpire; if they are unable to agree as to such choice the umpire will be appointed by the Council of the League of Nations.

VII

The British, French, and Italian Governments, acknowledging the importance of the measure of pacification which forms the subject of Article 5 of the agreement concluded on the 30th January, 1923, between the Greek Government and the Turkish Government relating to the return of interned civilians and to the exchange of prisoners of war, declare that they are prepared to adopt, subject to reciprocity on the part of the Turkish Government, the same measures for the benefit of such Turkish prisoners of war and interned civilians as may still be in their hands, with the exception of those who may have committed crimes and offences against the ordinary law since the 20th November, 1922.

Done at Lausanne, the 24th July, 1923.

HORACE RUMBOLD.	CONST. DIAMANTLY.
PELLÉ.	CONST. CONTZESCO.
GARRONI.	
G. C. MONTAGNA.	M. ISMET.
K. OTCHIAL.	DR. RIZA NOUR.
E. K. VENISELOS.	HASSAN.
D. CACLAMANOS.	

PROTOCOL

It is understood that, in spite of the terms of paragraph 1 of the amnesty declaration, the Turkish Government reserves to itself the right to prohibit sojourn in and access to Turkey to 150 persons included in the category of persons referred to in the said paragraph. Consequently, the Turkish Government will be entitled to expel from its territory such of the persons in question as may be there at the present time and to prohibit such as are abroad from returning. The names of these persons shall be annexed to the amnesty proclamation which, on the coming into force of the treaty of peace signed this day, shall be promulgated by the said government in order to give effect, in so far as that government is concerned, to the above-mentioned declaration. It is further understood that, in the event of the Turkish Government deciding, as it has expressed the intention, that the said

persons must liquidate their property and other goods in Turkey, they shall be granted a period of nine months as from the date of the above-mentioned proclamation to effect this liquidation of their own accord, and in the event of liquidation by the Turkish Government after the expiry of this period the whole of the proceeds shall be paid to the said persons.

It is similarly understood that paragraph 1 of the amnesty declaration in no way affects the right of the Greek Government to prosecute non-Moslem Greek subjects belonging or having belonged to its army for acts which constituted failure in respect of their military duties during the hostilities between Greece and Turkey.

Done at Lausanne, the 24th July, 1923.

• HORACE RUMBOLD.	CONST. DIAMANDY.
PELLÉ.	CONST. CONTZESCO.
GARRONI.	
.....	M. ISMET.
K. OTCHIAL.	DR. RIZA NOUR.
E. K. VENISELOS.	HASSAN.
D. CACLAMANOS.	

IX. DECLARATION RELATING TO MOSLEM PROPERTIES IN GREECE

The undersigned, acting in virtue of their full powers, declare, in the name of the Greek Government, that there shall be no infringement of rights to property held by Moslem persons, who are not subject to the terms of the convention respecting the exchange of populations, signed at Lausanne on the 30th January, 1923, and who have left Greece, including the Island of Crete, before the 18th October, 1912, or who have always resided outside Greece. Such persons will preserve their right to complete freedom as regards the disposal of their property.

Such arrangements and measures as may have been exceptionally taken or applied in regard to the property of the said Moslems shall be annulled. In the event of the revenues derived from such properties having been collected by the Greek Government or authorities without having been hitherto restored, or without having been the subject of special agreements between the Government and the interested parties, such revenues shall be paid to the owners. All claims respecting the revenues in question, and all claims based on an allegation by such persons that their rights had been infringed by an unfair application of measures of a general nature, shall be settled by the commission, for which provision is made in the above-mentioned convention, subject, nevertheless, to the condition that such claims shall be made within a period of six months from the entry into force of the treaty of peace signed this day. The said claims shall be examined at once by the

commission, in order that they may be settled within a year's time at the most from the coming into force of the said treaty.

In view of the difficulties of a practical nature with which the above-mentioned persons might be confronted, by reason of their absence, as regards their right to dispose freely of their goods, the Greek Government agrees that they shall be able to take advantage, if they so desire, of the services of the above-mentioned Mixed Commission to dispose of their property. It is understood that in this event intervention on the part of the Mixed Commission will entail no obligation for the Greek Government to purchase the properties in question, and that the task of the commission will be limited to facilitating the disposal thereof.

It is understood that the present declaration is made on the condition that reciprocity shall be granted to Greek owners of property who have left Turkey before the 18th October, 1912, or who have always resided outside Turkey.

Done at Lausanne, the 24th July, 1923.

E. K. VENISELOS.

D. CACLAMANOS.

X. DECLARATION RELATING TO SANITARY MATTERS

The undersigned, acting in virtue of their full powers, declare that the Turkish Government will appoint for a period of five years three European medical specialists as counsellors for the sanitary administration of the frontiers. These medical specialists shall be Turkish officials and shall be attached to the Ministry of Health. They shall be chosen by the said government from a list of six names, prepared in agreement by the Health Committee of the League of Nations and by the International Bureau of Public Health. Their salary, as well as the other terms of their appointment, shall be settled by agreement between the said government and the two above-mentioned international organizations.

The Turkish Sanitary Administration shall establish, with the help of the three above-mentioned European counsellors, regulations for the organization of the sanitary administration of the coasts and frontiers of Turkey. These regulations shall be in accordance with the terms of the International Sanitary Conventions, and, in so far as the Straits are concerned, with the terms of the Straits Convention signed this day.

The yield of the sanitary taxes exacted by the Turkish administration shall be exclusively applied to the needs of the sanitary administration of Turkey, and shall appear in a special budget, which shall be prepared for this purpose by the Ministry of Health.

Done at Lausanne, the 24th July, 1923.

ISMET.

DR. RIZA NOUR.

HASSAN.

XI. DECLARATION RELATING TO THE ADMINISTRATION OF JUSTICE

The Turkish delegation has already had occasion to state that the Government of the Grand National Assembly of Turkey is in a position to ensure to foreigners before the Turkish courts all the safeguards of a good judicial system and to provide therefor in the exercise of its full sovereignty and without any kind of foreign interference. It is nevertheless prepared to have an investigation made and to cause the situation to be studied with a view to the institution of such reforms as may be rendered advisable by the development of manners and civilization.

Animated by this spirit, the undersigned, acting in virtue of their full powers, desire to make the following declaration:—

1

The Turkish Government proposes to take immediately into its service, for such period as it may consider necessary, not being less than five years, a number of European legal counsellors whom it will select from a list prepared by the Permanent Court of International Justice of The Hague from among jurists nationals of countries which did not take part in the war of 1914–1918, and who will be engaged as Turkish officials.

2

These legal counsellors will serve under the Minister of Justice; some will be posted in the city of Constantinople and others in the city of Smyrna. They will take part in the work of the legislative commissions. It will be their duty to observe, without interfering in the performance by the magistrates of their duties, the working of the Turkish civil, commercial and criminal courts, and to forward to the Minister of Justice such reports as they may consider necessary; they will be authorized to receive all complaints to which the administration of justice in civil, commercial or criminal matters, the execution of sentences, or the manner of application of the law may give rise, with a view to bringing such complaints to the notice of the Minister of Justice in order to ensure the strict observance of the provisions of Turkish law.

Similarly, they will be authorized to receive such complaints as may be caused by domiciliary visits, perquisitions or arrests; moreover, these measures shall, in the judicial districts of Constantinople and of Smyrna, be brought, immediately after their execution, to the notice of the legal counsellor by the local representative of the Minister of Justice; this official shall in such cases be authorized to correspond direct with the legal counsellor.

3

In cases of minor offences release on bail shall always be ordered, unless this entails danger to public safety or unless such provisional release is calculated to impede the investigation of the case.

4

In civil or commercial matters all references to arbitration and clauses in agreements providing therefor are allowed, and the arbitral decisions rendered in pursuance thereof shall be executed on being signed by the President of the Court of First Instance, who shall not refuse his signature unless the decision should be contrary to public order.

5

The present declaration shall remain in force for a period of five years.
Done at Lausanne, the 24th July, 1923.

ISMET.

DR. RIZA NOUR.
HASSAN.

XII. PROTOCOL RELATING TO CERTAIN CONCESSIONS GRANTED IN THE OTTOMAN EMPIRE

The British Empire, France, Italy, Greece, Roumania, the Serb-Croat-Slovene State and Turkey, being desirous of settling by agreement questions relating to certain concessions granted in the Ottoman Empire,

The undersigned, duly authorized, agree as follows:—

SECTION I

ARTICLE 1

Concessionary contracts and subsequent agreements relating thereto, duly entered into before the 29th October, 1914, between the Ottoman Government or any local authority, on the one hand, and nationals (including companies) of the contracting Powers, other than Turkey, on the other hand, are maintained.

ARTICLE 2

(i.) On the request of the Turkish Government, the operations contemplated in the agreements entered into between the Ottoman Government and Sir W. G. Armstrong, Whitworth and Company, Limited, and Vickers, Limited, during the years 1913 and 1914, relating to the constitution and the concession of the Société Impériale Ottomane Coïntéressée des Docks, Arsenaux et Constructions Navales will be suspended.

Negotiations shall be entered into between the two parties with a view to the modification of the provisions of these agreements or the grant of a new concession for an undertaking of equal importance.

If, within six months from the coming into force of the treaty of peace signed this day, an agreement shall not have been come to between the Turkish Government and the said companies, either for the modification of the provisions of the said agreements or for the grant of a new concession,

the companies mentioned above shall have the right to submit to experts, appointed in accordance with the provisions of Article 5, the settlement of the conditions of the new concession to be granted as compensation for the cancellation of the old agreements.

It is nevertheless understood that, if the conditions settled by the experts for the new concession are not acceptable to one or other of the parties, the Turkish Government undertakes to pay to the said companies such indemnity for the loss actually suffered for the cancellation of their old concession as the experts determine to be equitable.

(ii.) If, within six months from the coming into force of the treaty of peace signed this day, the Régie Générale des Chemins de fer shall not, for any reason, have been restored to the possession of the concession which was given to it in 1914 for the construction and exploitation of the Samsun-Sivas Railway, the Turkish Government undertakes to grant to this company, at its request, a new concession by way of compensation. In default of agreement as to the equivalence of this compensation, the extent and conditions of exploitation of this new concession necessary to give compensation will be determined by experts appointed in accordance with Article 5.

It is understood that, if the Régie Générale is restored to the possession of the Samsun-Sivas Concession, it will be re-adapted in accordance with the procedure for settlement by experts provided for by Article 5. In case of compensation by a new concession due regard will also be had to the power of re-adaptation.

If the conditions of the new concession, as determined by the experts, are not acceptable to one or other of the parties, the Turkish Government undertakes to pay to the company such indemnity as the experts determine to be equitable for the loss actually suffered from the cancellation of the concession for the Samsun-Sivas Railway and for the expenses to which the company has been put for the survey and investigation work on the spot in respect of the other sections of the Black Sea Railway system.

Turkey will be entirely freed from all liability to the company, either by the restoration of the company to possession of the Samsun-Sivas Concession, or by the grant of the new concession, or, lastly, by the payment of an indemnity in accordance with the provisions set out above.

ARTICLE 3

The amount due, after settlement of accounts, to the state or to beneficiaries under contracts and agreements referred to in Articles 1 and 2, in respect of the use by the state, on the territory which it now possesses, of the property or the services of the said beneficiaries shall be paid in accordance with existing contracts or agreements or, in default of contracts or agreements, in accordance with the procedure of settlement by experts provided for by the present protocol.

ARTICLE 4

Subject to the provisions of Article 6, the provisions of the contracts and subsequent agreements referred to in Article 1 shall, by agreement, and as regards both parties, be put into conformity with the new economic conditions.

ARTICLE 5

In the absence of agreement within one year from the coming into force of the treaty of peace signed this day, the parties will adopt the provisions regarding both the settlement of accounts and the re-adaptation of concessions, which are considered suitable and equitable by two experts, to be nominated by the parties within two months from the expiration of the period of one year mentioned above. In case of disagreement, these experts will refer the question to a third expert selected within two months by the Turkish Government from a list of three persons, nationals of countries not having participated in the war of 1914-1918, prepared by the head of the Swiss Federal Department of Public Works.

ARTICLE 6

Beneficiaries under concessionary contracts referred to in Article 1, which have not, on the date of this protocol, begun to be put into operation, cannot avail themselves of the provisions of this protocol relating to re-adaptation. These contracts may be dissolved on the request of the concessionnaire made within six months from the coming into force of the treaty of peace signed this day. In such case the concessionnaire will be entitled, if there is ground for it, to such indemnity in respect of the survey and investigation work as, in default of agreement between the parties, shall be considered equitable by the experts provided for in this protocol.

ARTICLE 7

Agreements entered into between the 30th October, 1918, and the 1st November, 1922, between the Ottoman Government and beneficiaries under contracts and concessions referred to in Article 1, as well as contracts between individuals involving the transfer of a concession entered into during this period, shall remain in force until they have received the approval of the Turkish Government. If this approval should not be granted, compensation shall, if there is ground for it, be paid to the concessionnaires in respect of the loss actually suffered, the amount being fixed by experts appointed as provided in Article 5. This provision shall not prejudice, as regards contracts previous to the 24th October, 1914, the right of readaptation provided for by this protocol.

Part III (Economic Clauses) of the said treaty, such accession taking effect at the same time and in the same conditions as the treaty. They have similarly agreed to admit Belgium to accede, in the same conditions, to the protocol dated this day relating to certain concessions granted in the Ottoman Empire.

Consequently, the high contracting parties take note of the declarations of accession made this day by the duly authorized representatives of Belgium and Portugal. As a result of these declarations, and once they have come into force, the state of peace and official relations shall, in so far as necessary, be considered as re-established between Turkey on the one hand and each of these two Powers on the other.

Done at Lausanne, the 24th July, 1923.

HORACE RUMBOLD.	D. CACLAMANOS.
PELLÉ.	CONST. DIAMANDY.
GARRONI.	CONST. CONTZESCO.
G. C. MONTAGNA.	M. İŞMET.
K. OTCHIAL.	DR. RIZA NOUR.
E. K. VENISELOS.	HASSAN.

DECLARATION SIGNED BY THE BELGIUM DELEGATE

The undersigned, after having produced to the representatives of the Powers signatory of the treaty of peace dated this day his full powers, found in good and due form, declares by these presents that he accedes in the name of Belgium to the stipulations of Section I of Part II (Financial Clauses) and to the stipulations of Part III (Economic Clauses) of the said treaty of peace, as well as to the stipulations of the protocol dated this day regarding certain concessions granted in the Ottoman Empire.

This accession, which will re-establish official relations, shall take effect at the time and in the terms and conditions prescribed in the protocol dated this day, by which the Powers signatory of the said treaty of peace have admitted Belgium to proceed to the present accession.

Done at Lausanne, the 24th July, 1923.

FERNAND PELTZER.

DECLARATION SIGNED BY THE PORTUGUESE DELEGATE

The undersigned, after having produced to the representatives of the Powers signatory of the treaty of peace dated this day his full powers, found in good and due form, declares by these presents that he accedes in the name of Portugal to the stipulations of Section I of Part II (Financial Clauses) and to the stipulations of Part III (Economic Clauses) of the said treaty of peace.

This accession, which will re-establish the state of peace and official relations, shall take effect at the time and in the terms and conditions prescribed

in the protocol dated this day, by which the Powers signatory of the said treaty of peace have admitted Portugal to proceed to the present accession.

Done at Lausanne, the 24th July, 1923.

A. M. BARTHOLOMEU FERREIRA.

XIV. PROTOCOL RELATING TO THE EVACUATION OF THE TURKISH TERRITORY OCCUPIED BY THE BRITISH, FRENCH AND ITALIAN FORCES

The Governments of France, Great Britain and Italy, Allied Powers whose troops at present occupy certain portions of Turkish territory, and the Government of the Grand National Assembly of Turkey, being equally desirous to give satisfaction without delay to the peaceful aspirations of their respective nations,

The undersigned, being duly authorized, have agreed respectively to take the following measures:

I

As soon as the ratification of the treaty of peace and other instruments concluded at Lausanne by the Grand National Assembly of Turkey shall have been notified to the Allied Powers in the person of their High Commissioners at Constantinople, the troops of the said Powers shall proceed to the evacuation of the territories occupied by them.

This operation shall include the withdrawal of the British, French and Italian naval units stationed in the strait of the Dardanelles, the Sea of Marmora and the Bosphorus.

II

The operations of evacuation shall be completed within six weeks.

III

As the evacuation proceeds, moveable and immoveable property of every description in the evacuated territories which may be duly identified as belonging to the Turkish Government or to Turkish public departments, and which are at present occupied by the Allied authorities or in their possession, shall be restored to the Turkish Government.

All measures of sequestration and of requisition shall be terminated. In respect of such restitutions and releases, *procès-verbaux* shall be drawn up, which will operate to a complete and final settlement of any claims.

The authorities of the occupying forces shall supply the Turkish Government with as complete an account as possible of all property, articles and material belonging to the said government which may have been handed over to third parties, and especially to Turkish companies.

Debts resulting from contracts concluded between the occupying authorities and private individuals will be paid in the conditions prescribed in those contracts.

IV

The warships, including the *Yavouz-Sultan-Selim*, arms, munitions and other war material, formerly the property of the Ottoman Government, of which the Allied Powers have disposed under the armistice convention signed at Mudros on the 30th October, 1918, and which remain on the date of signature of the present protocol in the hands of the authorities of the said Powers in Turkey, shall be restored to Turkey, within the period referred to in paragraph II, in their present state and in the places where they are.

V

The stipulations of the military convention signed at Mudania on the 11th October, 1922, shall remain in force during the period referred to in paragraph II of the present protocol.

The necessary measures to avoid any incident during the said period shall be taken by agreement between the Allied and Turkish military authorities.

The authorities of the occupying troops shall settle, by agreement with the Turkish authorities, all other questions which may arise from the evacuation operations.

VI

Without waiting for the coming into force of the treaty of peace, the Turkish Government will confer on nationals of the Powers signatory to the said treaty the privileges resulting from Articles 69, 72, 77 and 91 (although, as regards Articles 72 and 91, the prescribed periods shall not have begun to run), and from the convention respecting conditions of residence and business. Similarly, the Turkish Government shall observe the stipulations contained in Articles 137, 138 and 140 of the treaty of peace.

VII

The British and Turkish Governments undertake respectively, pending the coming into force of the treaty of peace, to take no action which might modify the *status quo* which is to be maintained, under the third paragraph of Article 3 (2) of the said treaty, until the determination of the frontier.

The said governments agree that the negotiations for which provision is made in the first paragraph of Article 3 (2) of the treaty of peace, relating to the frontier between Turkey and Iraq, shall be commenced as soon as the evacuation operations mentioned in paragraph I above shall have been completed, and that the period of nine months referred to in the said first paragraph of Article 3 (2) of the treaty shall begin to run from the date on which the said negotiations commence.

Done at Lausanne, the 24th July, 1923.

HORACE RUMBOLD.
PELLÉ.
GARRONI.
G. C. MONTAGNA.

M. ISMET.
DR. RIZA NOUR.
HASSAN.

DECLARATION

The undersigned, acting in virtue of their full powers, declare as follows:

I

It is understood that, pending the coming into force of the Straits Convention signed this day, the fleets of the three Allied Powers will retain full and complete liberty of passage through the Straits. The warships of the said Powers in transit through the Straits shall not, except in the event of damage or peril of the sea, remain therein beyond the time which is necessary for them to effect their passage, including the time of anchorage during the night, if necessary for safety of navigation.

II

Notwithstanding the stipulations of paragraph I of the above protocol, and until the coming into force of the Straits Convention signed this day, or until the 31st December, 1923, if the said convention has not come into force by that date, the Turkish Government will raise no objection to the maintenance in the Straits by each of the three Allied Powers of one cruiser and two destroyers, which may be accompanied by the necessary vessels for coaling and revictualling; the latter vessels shall not fly the naval ensign.

III

The undersigned draw attention to the fact that, as from the date of the coming into force of the treaty of peace signed this day, maritime cabotage and port services will be reserved to the Turkish national flag.

They desire, nevertheless, to state that, until the 31st December, 1923, those firms which, on the 1st January, 1923, carried on cabotage or port services in Turkey shall be allowed complete liberty to continue this business.

In any event until the 31st December, 1923, Turkey will, without discrimination in favor of any Power, grant to the vessels of the other Powers signatory of the Commercial Convention dated this day all facilities of navigation, access and commerce which are provided for by Section II of the Commercial Convention for the vessels, their cargoes and their passengers.

IV

In making this declaration, the undersigned express the hope that the treaty of peace and other instruments signed at Lausanne will come into force as soon as possible.

Done at Lausanne, the 24th July, 1923.

M. İSMET.
DR. RIZA NOUR.
HASSAN.

XV. PROTOCOL RELATING TO THE KARAGATCH TERRITORY
AND THE ISLANDS OF IMBROS AND TENEDOS, SIGNED
BY THE BRITISH EMPIRE, FRANCE, ITALY, JAPAN, GREECE
AND TURKEY

The undersigned, duly authorized, have agreed on the following stipulations:

I

The territory situated between the Maritza and the Greco-Turkish frontier described in Article 2 (2) of the treaty of peace dated this day, which is to be restored to Turkey, shall be handed over to the Turkish authorities on the 15th September, 1923, at the latest, provided that the ratification of the said treaty by the Grand National Assembly of Turkey has been notified to the Greek Government by that date through the Allied High Commissioners at Constantinople. If that notification has not been made on the above-mentioned date, the transfer of the said territory shall take place within fifteen days from the notification.

II

The fact that the delimitation provided for in Article 5 of the treaty of peace shall not have been completed shall not delay the transfer of the above-mentioned territory to the Turkish authorities. In this event, the Greek and Turkish Governments shall proceed to a temporary delimitation on the spot of the line described in Article 2 (2) of the treaty of peace. This temporary delimitation shall be respected on both sides until the completion of the work of the commission for which provision is made in Article 5 of the said treaty.

III

The Greek inhabitants of Karagatch shall be subject to the exchange of populations for which provision is made in the convention signed the 30th January, 1923, between Greece and Turkey. They shall benefit from the stipulations of the said convention, but they shall only be compelled to emigrate six months after the re-establishment of a state of peace between Greece and Turkey.

IV

The withdrawal of the Greek troops and authorities from the islands of Imbros and Tenedos shall be carried out as soon as the treaty of peace signed this day shall have been ratified by the Greek and Turkish Governments. As soon as this withdrawal has taken place, the stipulations of Article 14 of the said treaty shall be applied by the Turkish Government.

V

No inhabitant of the territory mentioned in paragraph I of the present protocol and no inhabitant of the islands mentioned in paragraph IV shall

be disturbed or molested in Turkey under any pretext whatsoever on account of his military or political conduct or any assistance of any kind given by him to a foreign Power signatory of the treaty of peace signed this day or to the nationals of such Power.

Full and complete amnesty shall be granted to all the inhabitants of the territory and islands mentioned in the preceding paragraph for all crimes and offences, whether political or under the ordinary law, committed before this day.

Done at Lausanne, the 24th July, 1923.

HORACE RUMBOLD.	E. K. VENISELOS.
PELLÉ.	D. CACLAMANOS.
GARRONI.	M. ISMET.
G. C. MONTAGNA.	DR. RIZA NOUR.
K. OTCHIAI.	HASSAN.

XVI. PROTOCOL RELATING TO THE TREATY CONCLUDED AT SÈVRES BETWEEN THE PRINCIPAL ALLIED POWERS AND GREECE ON THE 10TH AUGUST, 1920, CONCERNING THE PROTECTION OF MINORITIES IN GREECE, AND TO THE TREATY CONCLUDED ON THE SAME DAY BETWEEN THE SAME POWERS RELATING TO THRACE

The Governments of the British Empire, France, Italy, Japan and Greece, being of opinion that the coming into force of the treaty of peace and other instruments concluded during the present conference will necessitate the bringing into force of the treaty concluded at Sèvres on the 10th August, 1920, between the Principal Allied Powers and Greece concerning the protection of minorities in Greece, and of the treaty relating to Thrace, also concluded on the 10th August, 1920, at Sèvres between the same Powers.

The undersigned, duly authorized, agree as follows on behalf of their respective governments:—

1. The ratifications of the two treaties concluded at Sèvres referred to above shall, if they have not already been deposited at that date, be deposited at the same time as the ratifications of the treaty of peace and instruments signed this day at Lausanne.
2. The provisions of Article 7, second paragraph, and of Article 15 of the Treaty of Sèvres referred to above concerning the protection of minorities, are and remain abrogated.
3. The application of the provisions of Article 1 of the Treaty of Sèvres referred to above relating to Thrace will be limited in accordance with the terms of Article 2 (2) of the treaty of peace signed this day.

Done at Lausanne, the 24th July, 1923.

HORACE RUMBOLD.	K. OTCHIAI.
PELLÉ.	E. K. VENISÉLOS.
GARRONI.	D. CACLAMANOS.
G. C. MONTAGNA.	

XVII. PROTOCOL RELATING TO SIGNATURE BY THE SERB-CROAT-SLOVENE STATE

The undersigned, having signed at Lausanne on this day, in the name of their respective governments, some or all of the instruments hereinafter mentioned, to wit:—

Treaty of peace;
 Convention respecting the régime of the Straits;
 Convention respecting the Thracian frontier;
 Convention respecting conditions of residence and business and jurisdiction;
 Commercial convention;
 Amnesty declaration and protocol;
 Protocol relating to certain concessions granted in the Ottoman Empire;
 Protocol relating to the accession of Belgium and Portugal to certain provisions of instruments signed at Lausanne;

have agreed, each in so far as concerns the instruments which he has signed, to admit the Serb-Croat-Slovene State to sign the said instruments simultaneously at Paris, at any time before the coming into force of the treaty of peace, through the intermediary of one or several of her plenipotentiaries whose names figure in the Final Act of the present Conference of Lausanne.

Done at Lausanne, the 24th July, 1923.

HORACE RUMBOLD.	E. K. VENISÉLOS.
PELLÉ.	D. CACLAMANOS.
GARRONI.	CONST. DIAMANDY.
G. C. MONTAGNA.	CONST. CONTZESCO.
K. OTCHIAL.	M. ISMET.
B. MORPHOFF.	DR. RIZA NOUR.
STANCIOFF.	HASSAN.

SUBSIDIARY DOCUMENTS FORMING PART OF THE PEACE SETTLEMENT

Letters exchanged between Ismet Pasha and Sir H. Rumbold respecting the exemption of Allied nationals, who suffered from the Smyrna fire, from the payment of the arrears of temettu tax due for the financial year 1922-1923

Your Excellency,

Lausanne, July 24, 1923.

With reference to the declaration made in the Economic Committee regarding the payment of arrears of taxes, I have the honor to confirm that the Turkish Government, inspired by the same sentiment of humanity as the three inviting Powers, will take the necessary measures in order that Allied nationals, who suffered from the Smyrna fire, may be exempted from

the payment of the arrears of the temettu tax due for the financial year 1922-23, notwithstanding the provisions of Article 69 (Economic Clauses).

I avail, &c.

M. ISMET.

His Excellency Sir Horace Rumbold,
 Delegate to His Britannic Majesty at the Peace Conference,
 &c., &c., &c.

Your Excellency,

Lausanne, July 24, 1923.

I have the honor to acknowledge the receipt of the letter which your Excellency has been so good as to address to me today confirming, in accordance with the arrangement made between the delegations concerned, that the Turkish Government will take the necessary measures in order that the Allied nationals who suffered from the Smyrna fire may be exempted from the payment of the arrears of the temettu tax due for the financial year 1922-1923, notwithstanding the provisions of Article 69 (Economic Clauses).

I avail, &c.

HORACE RUMBOLD.

His Excellency General Ismet Pasha,
 President of the Turkish Delegation,
 &c., &c., &c.

Letter addressed by the delegates of the three inviting Powers to Ismet Pasha in connection with the suppression of Article 70 of the original draft treaty of peace (financial operations of the Council of the Ottoman Debt since the 30th October, 1918)

M. le Président,

Lausanne, July 23, 1923.

At the last meeting of the Second Committee, it was agreed between us that Article 70 of the former draft treaty, regarding certain financial operations carried out at Constantinople after the 30th October, 1918, should be suppressed, and replaced by a letter addressed by your Excellency to the Council of the Debt, a letter the receipt of which the latter was to have acknowledged and with which it was to have notified its agreement. We had also reached agreement with your Excellency on the draft letter to be addressed to the Council, a copy of which you have communicated to us.¹

¹ The following was to have been the text of the draft letter referred to:

Draft letter to be addressed by the Turkish Government to the Council of the Ottoman Public Debt (to replace Article 70 of the draft treaty of January 31)

The payments which have been effected since the 30th October, 1918, up to the date of the present letter by the establishments entrusted with the service of the loans of the Ottoman Public Debt, in respect of the coupons due on the Unified Debt and on the other loans as well as on the *Lots turcs* drawn for payment, shall not be further contested in any way by the Turkish Government.

We regret to have to inform your Excellency that it appears from correspondence exchanged with the President of the Council of the Debt that the draft agreed upon here presents certain difficulties from the point of view of the Council. As there is not sufficient time to settle these difficulties before the signature of the treaty, we propose to your Excellency that the question of the letters to be exchanged between the Government and the Council of the Debt should be left over for subsequent settlement. It should be clearly understood that in making this proposal we do not wish in any way to go back on the agreement to suppress Article 70 of the former draft treaty, and that we adhere to the principles on which the draft letter which we had agreed upon was based, that is, that the validity of the operations in question will not be disputed, but that, on the other hand, they are not to be regarded as constituting a precedent in so far as concerns the currency in which payments are to be made.

We avail, &c.

PELLÉ HORACE RUMBOLD G. C. MONTAGNA.

His Excellency General Ismet Pasha,
President of the Turkish Delegation,
&c., &c., &c.

Letters exchanged between Ismet Pasha and Sir H. Rumbold respecting the treatment to be accorded by the Turkish Government to British religious, scholastic and medical establishments and charitable institutions in Turkey

Your Excellency,

Lausanne, July 24, 1923.

With reference to the convention regarding the conditions of residence and business signed at Lausanne today, and following on the decision taken by the First Committee at its meeting of the 19th May, 1923, regarding the substitution of the declaration, which was to have been annexed to the said convention, by an exchange of letters, I have the honor to declare, in the name of my government, that the latter will recognize the existence of British religious, scholastic and medical establishments, as well as of charitable institutions recognized as existing in Turkey before the 30th October, 1914, and that it will favorably examine the case of other similar British institutions actually existing in Turkey at the date of the treaty of peace signed today, with a view to regularize their position.

The payments, encashments and settlements of account effected since the 30th October, 1918, up to the date of the present letter, in accordance with the agreement concluded between the Council of the Ottoman Public Debt and the Constantinople Government in regard to the portion payable to the Ottoman Public Debt of the customs revenues (customs surtaxes) in consequence of the application of the specific tariffs, are recognized as valid.

It is understood that the operations referred to in the present letter must not be considered as forming a precedent in regard to future payments.

The establishments and institutions mentioned above will, as regards fiscal charges of every kind, be treated on a footing of equality with similar Turkish establishments and institutions, and will be subject to the administrative arrangements of a public character, as well as to the laws and regulations, governing the latter. It is, however, understood that the Turkish Government will take into account the conditions under which these establishments carry on their work, and, in so far as schools are concerned, the practical organization of their teaching arrangements.

I avail, &c.

M. ISMET.

His Excellency Sir Horace Rumbold,

Delegate of His Britannic Majesty at the Peace Conference,

&c.,

&c.,

&c.

M. le Président,

Lausanne, July 24, 1923.

I have the honor to acknowledge the receipt of the letter which your Excellency has been good enough to address to me today in accordance with the agreement reached between the delegations concerned, in regard to the treatment to be accorded by the Turkish Government to British religious, scholastic and medical establishments in Turkey.

I avail myself, &c.

HORACE RUMBOLD.

His Excellency General Ismet Pasha,

President of the Turkish Delegation,

&c.,

&c.,

&c.

*Letters exchanged between Ismet Pasha and Sir H. Rumbold respecting cabotage*¹

Your Excellency,

Lausanne, July 24, 1923.

With reference to Article 9 of the Commercial Convention signed at Lausanne on today's date, I hasten to inform your Excellency of what follows:

The Turkish Government, having decided to reserve cabotage trade to the national flag, has the honor to inform your Excellency that it agrees that the concerns mentioned below, which have hitherto carried on regular services in Turkish waters, should undertake in Turkey the transport of goods and passengers from one port to another; and it is prepared to negotiate with these concerns the conditions under which they may eventually be authorized to continue such traffic, for such period as may be provided for in any contract which they may conclude with the Turkish Government.

If, within a period of six months from the 1st January, 1924, these negotiations should not have led to an agreement, the said concerns would only be entitled to carry on their activities under present conditions for a further period of two years.

¹ Shipping trade from one port to another of the same state.

The concerns referred to above as benefiting by this arrangement will be the following:

The Khedivial Mail Steamship and Graving Dock Company (Limited).

M. and J. Constant.

Ellerman Line (Limited).

The vessels of Turkish concerns which at the present time are engaged in cabotage trade in Turkey shall enjoy reciprocal treatment on the coasts of Great Britain.

I beg your Excellency to be so good as to inform me of the agreement of your Government, and I avail, &c.

M. ISMET.

His Excellency Sir Horace Rumbold,

Delegate of His Britannic Majesty at the Peace Conference,

&c.,

&c.

&c.

Your Excellency,

Lausanne, July 24, 1923.

I have the honor to acknowledge the receipt of the letter of today's date which your Excellency has been so good as to address to me regarding cabotage trade. In taking note, in the name of my government, of the contents of the said letter, I hasten to inform you that we are in agreement both in regard to the conditions under which the cabotage services of the three British shipping concerns mentioned in your letter are to be carried on, and in regard to the reciprocal conditions to be granted on the coasts of Great Britain, to the vessels of Turkish concerns which at the present date are engaged in cabotage trade in Turkey.

I avail, &c.

HORACE RUMBOLD.

His Excellency General Ismet Pasha,

President of the Turkish Delegation,

&c.,

&c.,

&c.

Letter addressed by Ismet Pasha to Sir H. Rumbold, enclosing copy of letter sent by Ismet Pasha to Sir W. G. Armstrong, Whitworth and Co. and Messrs. Vickers, Limited; together with copy of acknowledgment sent by Sir H. Rumbold

Your Excellency,

Lausanne, July 24, 1923.

I have the honor to transmit to you herewith a copy of the letter which I have addressed today to the Chairman of Messrs. Armstrong, Whitworth and Co., Limited, and Messrs. Vickers, Limited.

I avail myself, &c.

M. ISMET.

His Excellency Sir Horace Rumbold,

Delegate of His Britannic Majesty at the Peace Conference,

&c.,

&c.,

&c.

[Enclosure]

M. le Président,

Lausanne, July 24, 1923.

In the name of the Minister of Public Works of the Government of the Grand National Assembly of Turkey, and with reference to the provisions regarding Messrs. Armstrong, Whitworth and Co., Limited, and Vickers, Limited, appearing in Article 2 of the Protocol of to-day's date concerning concessions, I have the honor to inform you of the following:

It is understood that if, within a period of five years from the date of the signature of the treaty of peace, the Turkish Government should propose either partially or completely to carry out the construction or to assure the working, by contracts to be concluded subsequently to the date in question, of the undertakings provided for in the conventions specified [in the aforementioned protocol], by inviting the coöperation of foreign industry or capital, the Turkish Government would advise the above-mentioned companies, and will put them in a position to compete on a footing of complete equality with any other person or company.

I avail myself, &c.

M. ISMET.

To the Chairman of

Messrs. Armstrong, Whitworth and Co., Limited,
and Messrs. Vickers, Limited, London.

M. le Président,

Lausanne, July 24, 1923.

I have the honor to acknowledge the receipt of the letter which your Excellency has been good enough to address to me today, enclosing a copy of the letter of the same date addressed by your Excellency, in accordance with the agreement reached between us, to Sir W. G. Armstrong, Whitworth and Co., and to Messrs. Vickers, Limited.

I avail myself, &c.

HORACE RUMBOLD.

His Excellency General Ismet Pasha,
President of the Turkish Delegation,
&c., &c., &c.

Letter addressed by the Turkish Delegation to the President of the Third Committee in regard to certain railway and port concessions in Turkey

Your Excellency,

Lausanne, July 24, 1923.

I have the honor to inform you that the concession contracts, as well as the subsequent agreements referring thereto, duly concluded before the 29th October, 1914, with the Ottoman Government in regard to the following undertakings are maintained: Anatolian Railway, Bagdad Railway, Mersina-Adana Railway, Oriental Railways and Haidar-Pasha harbor. The clauses of the said contracts and agreements will, within a period of

one year to be reckoned from the coming into force of the treaty of peace of today's date, be brought into conformity with the new economic conditions.

I avail myself, &c.

M. ISMET.

To the President of the

Third Committee of the Peace Conference.

Convention regarding compensation payable by Greece to Allied nationals

The British Empire, France, Italy and Greece, wishing to settle the method of repayment, by the Greek Government, to nationals of the other contracting Powers and to companies in which, on the 1st June, 1921, the interests of the latter were preponderant, of debts resulting from the actions of the Greek authorities in Turkey,

Have resolved to conclude a convention for this purpose, and have appointed as their plenipotentiaries:

FOR THE BRITISH EMPIRE:

The Right Honorable Sir Horace George Montagu Rumbold, Baronet, G.C.M.G., High Commissioner at Constantinople;

FOR FRANCE:

General Maurice Pellé, Ambassador of France, High Commissioner of the Republic in the East, Grand Officer of the National Order of the Legion of Honor;

FOR ITALY:

The Honorable Marquis Camillo Garroni, Senator of the Kingdom, Ambassador of Italy, High Commissioner at Constantinople, Grand Cross of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy;

M. Giulio Cesare Montagna, Envoy Extraordinary and Minister Plenipotentiary at Athens, Commander of the Order of Saints Maurice and Lazarus, Grand Officer of the Crown of Italy;

FOR GREECE:

M. Eleftherios K. Veniselos, formerly President of the Council of Ministers, Grand Cross of the Order of the Savior;

M. Demetrios Caclamanos, Minister Plenipotentiary at London, Commander of the Order of the Savior;

Who, having produced their full powers, found in good and due form, have agreed as follows:—

SINGLE ARTICLE

The Greek Government undertakes to pay to the nationals of the other contracting Powers and to Turkish companies in which, on the 1st June, 1921, the interests of the latter were preponderant, in a proportion corre-

spending to those interests, the sums which are due to them for the repayment of the value of goods requisitioned or seized by the Greek armies or administrative authorities, the sums due for services rendered to those armies and authorities which have not already been paid, as well as those due as compensation for other losses and damage suffered after the 1st June, 1921, by the said nationals and companies, resulting from the acts of the Greek armies or administrative authorities, other than loss and damage due to acts of war in the zone of active military operations.

Failing an agreement between the parties concerned and the Greek Government, the amounts due shall be determined by an arbitral tribunal consisting of a representative of the Greek Government, of a representative of the claimant, and of an umpire chosen by mutual agreement, or, failing agreement, by the President of the Permanent Court of International Justice at The Hague.

The payments referred to in the foregoing provisions shall be effected by means of annuities spread over a period of forty years, calculated with an interest of five per cent., or according to such other mode of settlement as may be subsequently adopted by mutual agreement.

It is understood that debts resulting from contracts concluded in the occupied territory in Turkey by the Greek armies or administrative authorities between those armies or authorities, on the one part, and the nationals of the other contracting parties, and Turkish companies in which the interests of the latter were preponderant, on the other part, shall be effected by the Greek Government according to the provisions of those contracts.

The present convention shall be ratified; each signatory Power shall deposit its ratification in Paris at the same time as its ratification of the treaty of peace of today's date. It will come into force as soon as all the signatory Powers shall have deposited their ratifications, a date which will be established by a formal minute drawn up by the French Government.

In faith whereof the above-named plenipotentiaries have signed the present convention.

Done at Lausanne, the 24th July, 1923, in a single copy which will be deposited in the archives of the Government of the French Republic, who will transmit a certified copy to each of the signatory Powers.

HORACE RUMBOLD.

PELLÉ.

GARRONI.

G. C. MONTAGNA.

E. K. VENISELOS.

D. CACLAMANCIS.

OFFICIAL DOCUMENTS

NATURALIZATION TREATY BETWEEN THE UNITED STATES AND BULGARIA¹

Signed at Sofia, November 23, 1923; ratifications exchanged at Sofia, April 5, 1924

The President of the United States of America and His Majesty Boris III, King of the Bulgarians, being desirous of reaching an agreement concerning the status of former nationals of either country who have acquired, or may acquire, the nationality of the other by reasonable processes of naturalization within any territory under its sovereignty, have resolved to conclude a treaty on this subject and for that purpose have appointed their plenipotentiaries, that is to say:

The President of the United States of America: Charles S. Wilson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Bulgaria; and His Majesty, the King of the Bulgarians: Christo Kalfoff, Minister for Foreign Affairs and Worship of Bulgaria,

Who, having communicated to each other their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE I

Nationals of the United States who have been or shall be naturalized in Bulgarian territory, shall be held by the United States to have lost their former nationality and to be nationals of Bulgaria.

Reciprocally, nationals of Bulgaria who have been or shall be naturalized in territory of the United States shall be held by Bulgaria to have lost their original nationality and to be nationals of the United States.

The foregoing provisions of this article are subject to any law of either country providing that its nationals do not lose their nationality by becoming naturalized in another country in time of war.

The word "national," as used in this convention, means a person owing permanent allegiance to, or having the nationality of, the United States or Bulgaria, respectively, under the laws thereof.

The word "naturalized" refers only to the naturalization of persons of full age, upon their own applications, and to the naturalization of minors through the naturalization of their parents. It does not apply to the acquisition of nationality by a woman through marriage.

ARTICLE II

Nationals of either country who have or shall become naturalized in the territory of the other, as contemplated in Article I, shall not, upon returning

¹ U. S. Treaty Series, No. 684.

to the country of former nationality, be punishable for the original act of emigration, or for failure, prior to naturalization, to respond to calls for military service not accruing until after *bona fide* residence was acquired in the territory of the country whose nationality was obtained by naturalization.

ARTICLE III

If a national of either country, who comes within the purview of Article I, shall renew his residence in his country of origin without the intent to return to that in which he was naturalized, he shall be held to have renounced his naturalization.

The intent not to return may be held to exist when a person naturalized in one country shall have resided more than two years in the other.

ARTICLE IV

The present treaty shall go into effect immediately upon the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the treaty, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

In witness whereof, the respective plenipotentiaries have signed this treaty and have hereunto affixed their seals.

Done in duplicate at Sofia this 23rd day of November, 1923.

[SEAL] CHARLES S. WILSON

[SEAL] CHR. KALFOFF.

CONVENTION AND STATUTE ON FREEDOM OF TRANSIT¹

Signed at Barcelona, April 20, 1921²

Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czecho-Slovakia, Uruguay and Venezuela:

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general conventions to which other Powers may accede at a later date constitute the best method of realizing the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognizing that it is well to proclaim the right of free transit and to make

¹ British Treaty Series No. 27 (1923), [Cmd. 1992].

² For ratifications and accessions, see note at end of statute, p. 127.

regulations thereon as being one of the best means of developing coöperation between states without prejudice to their rights of sovereignty or authority over routes available for transit,

Having accepted the invitation of the League of Nations to take part in a conference at Barcelona which met on the 10th March 1921, and having taken note of the final Act of such conference,

Anxious to bring into force forthwith the provisions of the regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a convention for this purpose, the high contracting parties have appointed as their plenipotentiaries:

The President of the Supreme Council of Albania: Monsignor Fan S. Noli, Member of Parliament;

The President of the Republic of Austria: M. Henri Reinhardt, Ministerial Councillor;

His Majesty the King of the Belgians: M. Xavier Neujean, Member of the Chamber of Representatives, Minister of Railways, Marine, Posts and Telegraphs;

The President of the Republic of Bolivia: M. Trifon Melean, Bolivian Consul-General in Spain;

His Majesty the King of Bulgaria: M. Lubin Bochkoff, Civil Engineer, Assistant to the Director General of Railways and Ports;

The President of the Republic of Chile: Señor Manuel Rivas Vicuña, Envoy Extraordinary and Minister Plenipotentiary;

The President of the Republic of China: M. Ouang Yong-Pao, Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the King of Denmark and of Iceland: M. Peter Andreas Holck-Colding, Chef de Bureau in the Ministry of Public Works;

His Majesty the King of Spain: Señor Don Emilio Ortuño y Berte, Member of the Chamber of Deputies, formerly Minister of Public Works;

The President of the Esthonian Republic: M. Charles Robert Pusta, Minister Plenipotentiary;

The President of the Republic of Finland: M. Rolf Thesleff, Envoy Extraordinary and Minister Plenipotentiary;

The President of the French Republic: M. Maurice Sibille, Deputy, Member of the Comité consultatif des Chemins de fer français;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: Sir Hubert Llewellyn Smith, G. C. B., Economic Adviser to the Government; and for the Dominion of New Zealand: Sir Hubert Llewellyn Smith, G. C. B.; for India: Sir Louis James Kershaw, K. C. S. I., C. I. E., Secretary in the Revenue and Statistics Department in the India Office;

His Majesty the King of the Hellenes: M. Pierre Scassi, Envoy Extraordinary and Minister Plenipotentiary of His Hellenic Majesty in Spain;

The President of the Republic of Guatemala: Dr. Norberto Galvez, Guatemalan Consul-General at Barcelona;

His Majesty the King of Italy: M. Paolo Bignami, Engineer, Member of the Chamber of Deputies, formerly Under-Secretary of State;

His Majesty the Emperor of Japan: M. Matsuda, Minister Plenipotentiary, Counsellor of the Japanese Embassy in Paris;

The President of the Republic of Latvia: M. Germain Albat, Under-Secretary of State for Foreign Affairs;

The President of the Lithuanian Republic: M. V. Sidzikauskas, Chargé d'Affaires at Berne;

Her Royal Highness the Grand-Duchess of Luxemburg: M. Antoine Lefort, Chargé d'Affaires at Berne;

His Majesty the King of Norway: Dr. Fridtjof Nansen, Professor in Christiania University;

The President of the Republic of Panama: Dr. Evenor Hazera, Consul-General for Panama in Spain, formerly Under-Secretary of State;

Her Majesty the Queen of the Netherlands: Jonkheer van Panhuys, Minister Plenipotentiary;

His Imperial Majesty the Shah of Persia: His Excellency Mirza Eusseïn Khan Alaï, Envoy Extraordinary and Minister Plenipotentiary to Spain;

The President of the Polish Republic: M. Joseph Wielowieyski;

The President of the Portuguese Republic: M. Alfredo Freire d'Andrade, formerly Minister for Foreign Affairs;

His Majesty the King of Roumania: M. E. Margaritescu Grécianu, Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the King of the Serbs, Croats and Slovenes: Dr. Ante Tresich-Pavichich, Envoy Extraordinary and Minister Plenipotentiary to Spain and Portugal;

His Majesty the King of Sweden: M. Fredrik V. Hansen, Director-General of Hydraulic Power and State Canals;

The President of the Swiss Confederation: M. Giuseppe Motta, Federal Councillor, Chief of the Federal Political Department;

The President of the Czecho-Slovak Republic: Dr. Otokar Lankas, Ministerial Councillor and Director of Transport in the Ministry of Railways;

The President of the Oriental Republic of Uruguay: M. Benjamin Fernandez y Medina, Envoy Extraordinary and Minister Plenipotentiary to Spain;

Who, after communicating their full powers found in good and due form, have agreed as follows:

ARTICLE 1

The high contracting parties declare that they accept the Statute on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on the 14th April 1921.

This statute will be deemed to constitute an integral part of the present convention. Consequently, they hereby declare that they accept the obligations and undertakings of the said statute in conformity with the terms and in accordance with the conditions set out therein.

ARTICLE 2

The present convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on the 28th June 1919, or out of the provisions of the other corresponding treaties, in so far as they concern the Powers which have signed, or which benefit by, such treaties.

ARTICLE 3

The present convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until the 1st December 1921.

ARTICLE 4

The present convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other members of the League and to states admitted to sign the convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present convention upon the deposit of the first ratification.

ARTICLE 5

Members of the League of Nations which have not signed the present convention before the 1st December 1921, may accede to it.

The same applies to states not members of the League to which the Council of the League may decide officially to communicate the present convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 6

The present convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present convention will take effect in the case of each party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present convention, the Secretary-General will address a certified copy of it to the Powers not members of the League which are bound under the treaties of peace to accede to it.

ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the parties have signed, ratified, acceded to or denounced the present convention. This record shall be open to the members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

ARTICLE 8

Subject to the provisions of Article 2 of the present convention, the latter may be denounced by any party thereto after the expiration of five years from the date when it came into force in respect of that party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all other parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

ARTICLE 9

A request for the revision of the present convention may be made at any time by one-third of the high contracting parties.

In faith whereof the above-named plenipotentiaries have signed the present convention.

Done at Barcelona the twentieth day of April one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the archives of the League of Nations.

FAN S. NOLI.

REINHARDT.

XAVIER NEUJEAN.

TRIFON MELEAN.

L. BOCHKOFF.

MANUEL RIVAS VICUNA.

OUANG YONG-PAO.

A. HOLCK-COLDING.

H. LLEWELLYN SMITH.

Subject to the declaration inserted in the *procès-verbal* of the meeting of April 19th, 1921, as to the British Dominions which have not been represented at the Barcelona Conference.*

P. SCASSI.

N. GALVEZ S.

PAOLO BIGNAMI.

M. MATSUDA.

GERMAIN ALBAT.

V. SIDZIKAVSKAS.

LEFORT.

FRIDTJOF NANSEN.

EVENOR HAZERA.

VAN PANHUYS.

HUSSEIN KHAN ALAI.

JOSEPH WIELOVIEYSKI.

A. FREIRE D'ANDRADE.

* The text of the declaration reads as follows:

"At the time of signing this convention, and as representative of the British Empire, I declare that my signature is not binding upon the British Dominions of Canada, Australia and South Africa, which are individual members of the League of Nations and have not sent

H. LLEWELLYN SMITH.

L. J. KERSHAW.

E. ORTUNO.

C. R. PUSTA.

ROLF THESLEFF.

MAURICE SIBILLE.

E. MARGARITESCO GRECIANU.

ANTE TRESICH-PAVICIC.

FREDRIK HANSEN.

MOTTA.

DR. LANKAS OTOKAR.

B. FERNANDEZ Y MEDINA.

Statute on Freedom of Transit

ARTICLE 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the contracting states, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the state across whose territory the transit takes place.

Traffic of this nature is termed in this statute "traffic in transit."

ARTICLE 2

Subject to the other provisions of this statute, the measures taken by contracting states for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this article, contracting states will allow transit in accordance with the customary conditions and reserves across their territorial waters.

ARTICLE 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to

representatives to this conference. The right of each of these three Dominions to sign the convention, or to accede to it at a later date, is reserved, it being understood that, if they do not sign or accede to it, they shall not be entitled to benefit by the convention.

"I also reserve the right to declare, at the time of ratification, whether the ratification includes the Dominion of Newfoundland. If it is not included in the ratification, the Dominion of Newfoundland will not be entitled to benefit by the convention."

cover, and the dues must be imposed under the conditions of equality laid down in the preceding article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

ARTICLE 4

The contracting states undertake to apply to traffic in transit on routes operated or administered by the state or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

ARTICLE 5

No contracting state shall be bound by this statute to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each contracting state shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and goods stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in this statute shall affect the measures which one of the contracting states may feel called upon to take in pursuance of general international conventions to which it is a party, or which may be concluded hereafter, particularly conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general conventions intended to prevent any infringement of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organized as not to hinder the transit of vessels.

ARTICLE 6

This statute does not of itself impose on any of the contracting states a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-contracting state, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or

leaving by, or destined for a non-contracting state, except when a valid reason is shown for such transit by one of the other contracting states concerned. It is understood that for the purposes of this article, goods in transit under the flag of a contracting state shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

The measures of a general or particular character which a contracting state is obliged to take in case of an emergency affecting the safety of the state or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 8

This statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The statute shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 9

This statute does not impose upon a contracting state any obligations conflicting with its rights and duties as a member of the League of Nations.

ARTICLE 10

The coming into force of this statute will not abrogate treaties, conventions and agreements on questions of transit concluded by contracting states before the 1st May 1921.

In consideration of such agreements being kept in force, contracting states undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this statute the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting states also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of this statute, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, contracting states may, in matters of transit, enter into regional understandings consistent with the principles of this statute.

ARTICLE 11

This statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the statute and have been granted, under conditions consistent with its principles, to traffic in transit across ter-

ritory under the sovereignty or authority of a contracting state. The statute also entails no prohibitions of such grant of greater facilities in the future.

ARTICLE 12

In conformity with Article 23 (e) of the Covenant of the League of Nations, any contracting state which can establish a good case against the application of any provision of this statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 13

Any dispute which may arise as to the interpretation or application of this statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the contracting states undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations, as the advisory and technical organization of the Members of the League in matters of communications and transit. In urgent cases, a preliminary opinion may recommend temporary measures intended, in particular, to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

ARTICLE 14

In view of the fact that within or immediately adjacent to the territory of some of the contracting states there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent states, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this statute, it is agreed that these provisions shall not apply to them.

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary customs and police supervision.

The states concerned, however, will apply in the cases referred to above a

régime which will respect the principles of the present statute and facilitate transit and communications as far as practicable.

ARTICLE 15

It is understood that this statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign state, whether or not these territories are individually members of the League of Nations.

NOTE

Ratifications deposited

Austria.....	Nov. 15, 1923
British Empire*.....	} Aug. 2, 1922
New Zealand.....	
India.....	
Bulgaria.....	July 11, 1922
Czechoslovakia.....	Oct. 29, 1923
Denmark.....	Nov. 13, 1922
Finland.....	Jan. 29, 1922
Italy.....	Aug. 5, 1922
Latvia.....	Sept. 29, 1923
Norway.....	Sept. 4, 1923
Roumania.....	Sept. 5, 1923

Accessions

Federated Malay States.....	Sept. 2, 1923
Unfederated Malay States.....	Sept. 2, 1923
Siam.....	Nov. 29, 1923

* Deemed to apply to Newfoundland, but not to Canada, South Africa or Australia.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND GREAT BRITAIN TO AID IN THE PREVENTION OF THE SMUGGLING OF INTOXICATING LIQUORS INTO THE UNITED STATES¹

Signed at Washington, January 23, 1924; ratifications exchanged at Washington, May 22, 1924.

The President of the United States of America;

And His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

Being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages;

¹ U. S. Treaty Series, No. 685.

Have decided to conclude a convention for that purpose;

And have appointed as their plenipotentiaries:

The President of the United States of America: Charles Evans Hughes,
Secretary of State of the United States;

His Majesty the King of the United Kingdom of Great Britain and Ireland
and of the British Dominions beyond the Seas, Emperor of India: The
Right Honorable Sir Auckland Campbell Geddes, G. C. M. G., K. C. B.,
His Ambassador Extraordinary and Plenipotentiary to the United
States of America;

Who, having communicated their full powers found in good and due form,
have agreed as follows:

ARTICLE I

The high contracting parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters.

ARTICLE II

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

ARTICLE III

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board British vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE IV

Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article II of this treaty or on the ground that it has not been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the high contracting parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for the settlement of outstanding pecuniary claims signed at Washington the 18th August, 1910, but the claim shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

ARTICLE V

This treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the high contracting parties may give notice of its desire to propose modifications in the terms of the treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the treaty, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the treaty shall lapse.

ARTICLE VI

In the event that either of the high contracting parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each high contracting party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

The present convention shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective plenipotentiaries have signed the present convention in duplicate and have thereunto affixed their seals.

Done at the city of Washington this twenty-third day of January, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL] CHARLES EVANS HUGHES.

[SEAL] A. C. GEDDES.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN
WOMEN AND CHILDREN.¹

*Opened for signature at Geneva from September 30, 1921, to March 31, 1922*²

Albania, Germany, Austria, Belgium, Brazil, the British Empire (with Canada, the Commonwealth of Australia, the Union of South Africa, New Zealand and India), Chile, China, Colombia, Costa Rica, Cuba, Esthonia, Greece, Hungary, Italy, Japan, Latvia, Lithuania, Norway, the Netherlands, Persia, Poland (with Danzig), Portugal, Roumania, Siam, Sweden, Switzerland and Czechoslovakia.

Being anxious to secure more completely the suppression of the traffic in women and children described in the preambles to the agreement of the 18th May, 1904, and to the convention of the 4th May, 1910, under the name of "White Slave Traffic";

Having taken note of the recommendations contained in the Final Act of the international conference which was summoned by the Council of the League of Nations and met at Geneva from the 30th June to the 5th July, 1921; and

Having decided to conclude a convention supplementary to the arrangement and convention mentioned above:

Have nominated for this purpose as their plenipotentiaries:

The President of the Supreme Council of Albania: Monsignor Fan S. Noli,
Member of Parliament, Delegate to the Second Assembly of the League of Nations.

¹ British Treaty Series No. 26 (1923), [Cmd. 1986].

² For ratifications and accessions, see note at end of treaty, p. 137.

The President of the German Reich: His Excellency Dr. Adolf Müller, Envoy Extraordinary and Minister Plenipotentiary in Berne.

The President of the Austrian Republic: His Excellency M. Albert Mensdorff-Pouilly-Dietrichstein, Former Ambassador, Delegate to the Second Assembly of the League of Nations.

His Majesty the King of the Belgians: M. Michel Levie, Minister of State, President of the International Conference on Traffic in Women and Children.

The President of the Republic of Brazil: His Excellency Dr. Gastão da Cunha, Ambassador in Paris, Delegate to the Second Assembly of the League of Nations.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: The Right Honorable Arthur James Balfour, O.M., M.P., Lord President of His Majesty's Most Honorable Privy Council, Delegate to the Second Assembly of the League of Nations.

For the Dominion of Canada: The Right Honorable Charles Joseph Doherty, Minister of Justice and Attorney-General, Delegate to the Second Assembly of the League of Nations.

For the Commonwealth of Australia: Captain Stanley Melbourne Bruce, M.C., Member of the House of Representatives, Delegate to the Second Assembly of the League of Nations.

For the Union of South Africa: The Honorable Sir Edgar Harris Walton, K.C.M.G., High Commissioner for the Union of South Africa in the United Kingdom, Delegate to the Second Assembly of the League of Nations.

For the Dominion of New Zealand: The Honorable Sir James Allen, K.C.B., High Commissioner for New Zealand in the United Kingdom, Delegate to the Second Assembly of the League of Nations.

For India: The Honorable Theo Russell, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty in Berne.

The President of the Republic of Chile: His Excellency M. Agustin Edwards, Envoy Extraordinary and Minister Plenipotentiary at London, Delegate to the Second Assembly of the League of Nations; His Excellency M. Manuel Rivas Vicuña, Envoy Extraordinary and Minister Plenipotentiary in Berne, Delegate to the International Conference on Traffic in Women and Children and to the Second Assembly of the League of Nations.

The President of the Republic of China: His Excellency M. Ouang Yong-pao, Envoy Extraordinary and Minister Plenipotentiary in Berne.

The President of the Republic of Colombia: His Excellency Dr. Francisco José Urrutia, Envoy Extraordinary and Minister Plenipotentiary in Berne, Delegate to the Second Assembly of the League of Nations; His Excellency Dr. A. J. Restrepo, Barrister for the Republic in the Co-

lombo-Venezuelan arbitration, Delegate to the Second Assembly of the League of Nations.

The President of the Republic of Costa Rica: His Excellency M. Manuel Maria de Peralta, Envoy Extraordinary and Minister Plenipotentiary in Paris, Delegate to the Second Assembly of the League of Nations.

The President of the Republic of Cuba: His Excellency M. Guillermo de Blanck, Envoy Extraordinary and Minister Plenipotentiary in Berne and The Hague. Delegate to the Second Assembly of the League of Nations.

The President of the Republic of Esthonia: His Excellency M. Antoine Piip, Minister for Foreign Affairs, Delegate to the Second Assembly of the League of Nations.

His Majesty the King of the Hellenes: M. Vassili Dendramis, Director of the Permanent Greek Secretariat for the League of Nations, Delegate to the International Conference on Traffic in Women and Children.

His Serene Highness the Governor of Hungary: M. Felix Parcher de Terjekfalva, Chargé d'Affaires in Berne.

His Majesty the King of Italy: His Excellency the Marquis G. Imperiali dei Principi di Francavilla, Ambassador, Delegate to the Second Assembly of the League of Nations.

His Majesty the Emperor of Japan: His Excellency M. le Baron G. Hayashi, Ambassador at London, Delegate to the Second Assembly of the League of Nations.

The President of the Republic of Latvia: M. M. V. Salnaïs, Under-Secretary of State for Foreign Affairs, Delegate to the Second Assembly of the League of Nations.

The President of the Lithuanian Republic: M. Ernest Galvanauskas, Minister for Finance, Commerce, Industry and Communications, Delegate to the Second Assembly of the League of Nations.

His Majesty the King of Norway: Dr. Fridtjof Nansen, President of the Norwegian Delegation to the Second Assembly of the League of Nations.

Her Majesty the Queen of the Netherlands: Jonkheer A. T. Baud, Attaché at the Netherlands Legation in Berne.

His Imperial Majesty the Shah of Persia: His Highness the Prince Arfa-Ed-Dowleh, Delegate to the Second Assembly of the League of Nations.

The President of the Polish Republic: M. Jean Perłowski,* Counsellor of Legation, Secretary-General of the Polish Delegation accredited to the League of Nations, Delegate to the International Conference on Traffic in Women and Children.

The President of the Portuguese Republic: His Excellency M. Alfredo Freire d'Andrade, Former Minister for Foreign Affairs, Delegate to the Second Assembly of the League of Nations.

* M. Perłowski is authorized by the Polish Government to represent the Free City of Danzig.

His Majesty the King of Roumania: His Excellency M. E. Margaritescu Greciano, Minister Plenipotentiary and Roumanian Chargé d'Affaires in Berne, Delegate to the International Conference on Traffic in Women and Children.

His Majesty the King of Siam: His Highness the Prince Charoon, Envoy Extraordinary and Minister Plenipotentiary, Delegate to the International Conference on Traffic in Women and Children and to the Second Assembly of the League of Nations.

The Federal Council of the Swiss Confederation: M. Giuseppe Motta, Federal Councillor, Head of the Political Federal Department, Delegate to the Second Assembly of the League of Nations.

The President of the Czecho-Slovak Republic: His Excellency Dr. Robert Flieder, Envoy Extraordinary and Minister Plenipotentiary in Berne.

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1

The high contracting parties agree that, in the event of their not being already parties to the agreement of the 18th May, 1904, and the convention of the 4th May, 1910, mentioned above, they will transmit, with the least possible delay, their ratifications of, or adhesions to, those instruments in the manner laid down therein.

ARTICLE 2

The high contracting parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes and who commit offences within the meaning of Article 1 of the convention of the 4th May, 1910.

ARTICLE 3

The high contracting parties agree to take the necessary steps to secure the punishment of attempts to commit, and, within legal limits, of acts preparatory to the commission of, the offences specified in Articles 1 and 2 of the convention of the 4th May, 1910.

ARTICLE 4

The high contracting parties agree that, in cases where there are no extradition conventions in force between them, they will take all measures within their power to extradite or provide for the extradition of persons accused or convicted of the offences specified in Articles 1 and 2 of the convention of the 4th May, 1910.

ARTICLE 5

In paragraph B of the final protocol of the convention of 1910, the words "twenty completed years of age" shall be replaced by the words "twenty-one completed years of age."

ARTICLE 6

The high contracting parties agree, in case they have not already taken legislative or administrative measures regarding licensing and supervision of employment agencies and offices, to prescribe such regulations as are required to ensure the protection of women and children seeking employment in another country.

ARTICLE 7

The high contracting parties undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children. In particular, they undertake to make such regulations as are required for the protection of women and children travelling on emigrant ships, not only at the points of departure and arrival, but also during the journey, and to arrange for the exhibition, in railway stations and in ports, of notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance.

ARTICLE 8

The present convention, of which the French and the English texts are both authentic, shall bear this day's date, and shall be open for signature until the 31st March, 1922.

ARTICLE 9

- The present convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other members of the League and to states admitted to sign the convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present convention upon the deposit of the first ratification.

ARTICLE 10

Members of the League of Nations which have not signed the present convention before the 1st April, 1922, may accede to it.

The same applies to states not members of the League to which the Council of the League may decide officially to communicate the present convention.

Accession will be notified to the Secretary-General of the League, who will notify all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 11

The present convention shall come into force in respect of each party on the date of the deposit of its ratification or act of accession.

ARTICLE 12

The present convention may be denounced by any member of the League or by any state which is a party thereto, on giving twelve months' notice of its intention to denounce. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all other parties, notifying them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

ARTICLE 13

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the parties have signed, ratified, acceded to or denounced the present convention. This record shall be open to the members of the League at all times; it shall be published as often as possible, in accordance with the directions of the Council.

ARTICLE 14

Any member or state signing the present convention may declare that the signature does not include any or all of its colonies, overseas possessions, protectorates or territories under its sovereignty or authority, and may subsequently adhere separately on behalf of any such colony, overseas possession, protectorate or territory so excluded in its declaration.

Denunciation may also be made separately in respect of any such colony, overseas possession, protectorate or territory under its sovereignty or authority, and the provisions of Article 12 shall apply to any such denunciation.

Done at Geneva, the 30th day of September, 1921, in a single copy, which shall remain deposited in the archives of the League of Nations.

Union of South Africa:

E. H. WALTON.

Albania:

F. S. NOLI.

Germany:

Dr. ADOLF MÜLLER.

Australia:

S. M. BRUCE.

I hereby declare that my signature does not include Papua, Norfolk Island and the mandated territory of New Guinea.

Austria:

ALBERT MENSENDORFF.

Belgium:

MICHEL LEVIE.

Brazil:

GASTÃO DA CUNHA.

British Empire:

I hereby declare that my signature does not include the Island of Newfoundland, the British Colonies and Protectorates, the Island of Nauru, or any territories administered under mandates by Great Britain.

ARTHUR JAMES BALFOUR.

Canada:

CHARLES J. DOHERTY.

Chile:

AGUSTIN EDWARDS.

MANUEL RIVAS VICUÑA.

China:

OUANG YONG-PAO.

Colombia:

FRANCISCO JOSÉ URRUTIA.

A. J. RESTREPO.

Con reserva de la ulterior aprobación del
Congreso de Colombia.

Subject to the subsequent approval of the
Colombian Congress.*

Costa Rica:

MANUEL M. DE PERALTA.

Cuba:

G. DE BLANCK.

Esthonia:

ANT. PIIP.

Greece:

VASSILI DENDRAMIS.

Hungary:

FELIX PARCHER.

India:

THEO RUSSELL.

I hereby declare that India reserves the
right at its discretion to substitute the
age of 16 years or any greater age that
may be subsequently decided upon for
the age limits prescribed in paragraph
(b) of the final protocol of the Con-
vention of May 4, 1910, and in Article 5 of
the present convention.

Italy:

Fino a nuova dichiarazione del Governo
del Re, dichiaro che la mia firma non
impegna le Colonie italiane.

Pending a further declaration by the
Government of the King, I declare that
my signature does not bind the Italian
Colonies.*

IMPERIALI.

Japan:

The undersigned delegate of Japan re-
serves the right on behalf of his govern-
ment to defer confirmation with regard
to Article 5 of this convention, and de-
clares that his signature does not in-

clude Chosen, Taiwan and the leased
territory of Kwantung.

HAYASHI.

Latvia:

M. V. SALNAIS.

Lithuania:

GALVANAUSKAS.

Norway:

FRIDTJOF NANSEN.

The Netherlands:

A. T. BAUD.

Persia:

PRINCE ARFA-ED-DOWLEH.

Poland and Danzig:

PERLOWSKI.

Portugal:

A. FREIRE D'ANDRADE.

Roumania:

MARGARITESCO GRECIANO.

Siam:

With reservation as to the age limit pre-
scribed in paragraph (b) of the final
protocol of the convention of 1910 and
Article 5 of this convention, in so far as
concerns the nationals of Siam.

CHAROON.

Sweden:

ADLERCREUTZ.

Subject to ratification with the approval
of the Riksdag.*

Switzerland:

MOTTA.

Subject to ratification by the Federal
Assembly.*

Czechoslovakia:

Dr. ROBERT FLIEDER.

New Zealand:

J. ALLEN.

I hereby declare that my signature does
not include the mandated territory of
Western Samoa.

J. A.

* Translation by the Secretariat of the League of Nations.

NOTE

Ratifications deposited

British Empire, Australia, Canada, South Africa, New Zealand, India	June 28, 1922
Austria	Aug. 9, 1922
Belgium	June 15, 1922
Cuba	May 7, 1923
Czechoslovakia	Sept. 29, 1923
Greece	April 9, 1923
Latvia	Feb. 12, 1924
Netherlands	Sept. 19, 1923
Norway	Aug. 16, 1922
Portugal	Dec. 1, 1923
Roumania	Sept. 5, 1923
Siam	July 13, 1922

Accessions

Bahamas, Barbados, British Honduras, Ceylon, Cyprus, Gibraltar, Grenada, Hong Kong, Kenya, Malta, Northern Rhodesia, Nyasaland, St. Lucia, St. Vincent, Seychelles, Southern Rhodesia, Straits Settlements, Trinidad.—September 23, 1922.

British Guiana, Fiji.—October 31, 1922.

Finland.—September 27, 1922.

Denmark.—March 12, 1923.

Leeward Islands, Jamaica, Mauritius.—March 7, 1924.

TREATY BETWEEN THE UNITED STATES AND LATVIA, PROVIDING FOR THE
EXTRADITION OF FUGITIVES FROM JUSTICE¹

Signed at Riga, October 16, 1923; ratifications exchanged at Riga, March 1, 1924

The United States of America and Latvia desiring to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the two countries and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America: F. W. B. Coleman, Envoy Extraordinary and Minister Plenipotentiary of the United States at Riga; and

The President of the Republic of Latvia: Germain Albat, Minister Plenipotentiary, Secretary-General for Foreign Affairs;

Who, after having communicated to each other their respective full powers,

¹ U. S. Treaty Series, No. 677.

found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

It is agreed that the Government of the United States and the Government of Latvia shall, upon requisition duly made as herein provided, deliver up to justice any person, who may be charged with, or may have been convicted of, any of the crimes specified in Article II of the present treaty committed within the jurisdiction of one of the high contracting parties, and who shall seek an asylum or shall be found within the territories of the other; provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.

ARTICLE II

Persons shall be delivered up according to the provisions of the present treaty, who shall have been charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms parricide, assassination, manslaughter when voluntary, poisoning or infanticide.
2. The attempt to commit murder.
3. Rape, abortion, carnal knowledge of children under the age of twelve years.
4. Abduction or detention of women or girls for immoral purposes.
5. Bigamy.
6. Arson.
7. Wilful and unlawful destruction or obstruction of railroads, which endangers human life.
8. Crimes committed at sea:
 - (a) Piracy, as commonly known and defined by the law of nations, or by statute;
 - (b) Wrongfully sinking or destroying a vessel at sea or attempting to do so;
 - (c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel;
 - (d) Assault on board ship upon the high seas with intent to do bodily harm.
9. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.
10. The act of breaking into and entering the offices of the Government

and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance and other companies, or other buildings not dwellings with intent to commit a felony therein.

11. Robbery, defined to be the act of feloniously and forcibly taking from the person of another goods or money by violence or by putting him in fear.

12. Forgery or the utterance of forged papers.

13. The forgery or falsification of the official acts of the Government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.

14. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by national, state, provincial, territorial, local or municipal governments, bank notes or other instruments of public credit, counterfeit seals, stamps, dies and marks of state or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.

15. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars or Latvian equivalent.

16. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars or Latvian equivalent.

17. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them, their families or any other person or persons, or for any other unlawful end.

18. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more, or Latvian equivalent.

19. Obtaining money, valuable securities or other property by false pretenses or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds two hundred dollars or Latvian equivalent.

20. Perjury or subornation of perjury.

21. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director or officer of any company or corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars or Latvian equivalent.

22. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.

23. Wilful desertion of minor or dependent children.

24. Extradition shall also take place for participation in any of the crimes before mentioned as an accessory before or after the fact; provided such

participation be punishable by imprisonment by the laws of both the high contracting parties.

ARTICLE III

The provisions of the present treaty shall not import a claim of extradition for any crime or offense of a political character, nor for acts connected with such crimes or offenses; and no person surrendered by or to either of the high contracting parties in virtue of this treaty shall be tried or punished for a political crime or offense. When the offense charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offense was committed or attempted against the life of the sovereign or head of a foreign state or against the life of any member of his family, shall not be deemed sufficient to sustain that such crime or offense was of a political character; or was an act connected with crimes or offenses of a political character.

ARTICLE IV

No person shall be tried for any crime or offense other than that for which he was surrendered.

ARTICLE V

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the fugitive may be found, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

ARTICLE VI

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offense committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and until he shall have been set at liberty in due course of law.

ARTICLE VII

If a fugitive criminal claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that state whose demand is first received.

ARTICLE VIII

Under the stipulations of this treaty, neither of the high contracting parties shall be bound to deliver up its own citizens.

ARTICLE IX

The expense of arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offense, or which may be material as evidence in making proof of the crime, shall so far as practicable, according to the laws of either of the high contracting parties, be delivered up with his person at the time of surrender. Nevertheless, the rights of a third party with regard to the articles referred to, shall be duly respected.

ARTICLE XI

The stipulations of the present treaty shall be applicable to all territory wherever situated, belonging to either of the high contracting parties or in the occupancy and under the control of either of them, during such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the high contracting parties. In the event of the absence of such agents from the country or its seat of government, or where extradition is sought from territory included in the preceding paragraphs, other than Latvia or the United States, requisitions may be made by superior consular officers. It shall be competent for such diplomatic or superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify it to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

In case of urgency, the application for arrest and detention may be addressed directly to the competent magistrate in conformity to the statutes in force.

The person provisionally arrested shall be released, unless within two months from the date of arrest in Latvia, or from the date of commitment in the United States, the formal requisition for surrender with the documentary proofs hereinafter prescribed be made as aforesaid by the diplomatic agent of the demanding government or, in his absence, by a consular officer thereof.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such con-

viction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

ARTICLE XII

In every case of a request made by either of the high contracting parties for the arrest, detention or extradition of fugitive criminals, the appropriate legal officers of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition before the respective judges and magistrates, by every legal means within their power; and no claim whatever for compensation for any of the services so rendered shall be made against the government demanding the extradition; provided, however, that any officer or officers of the surrendering government so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE XIII

The present treaty shall be ratified by the high contracting parties in accordance with their respective constitutional methods and shall take effect on the date of the exchange of ratifications which shall take place at Riga as soon as possible.

ARTICLE XIV

The present treaty shall remain in force for a period of ten years, and in case neither of the high contracting parties shall have given notice one year before the expiration of that period of its intention to terminate the treaty, it shall continue in force until the expiration of one year from the date on which such notice of termination shall be given by either of the high contracting parties.

In witness whereof the above-named plenipotentiaries have signed the present treaty and have hereunto affixed their seals.

Done in duplicate at Riga this sixteenth day of October, nineteen hundred and twenty-three.

[SEAL] F. W. B. COLEMAN.

[SEAL] G. ALBAT.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES¹

Signed at Mexico City, September 10, 1923; ratifications exchanged at Mexico City, February 19, 1924

The United States of America and the United Mexican States, desiring to settle and adjust amicably claims arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910, to May 31, 1920, inclusive, have decided to enter into a convention for that purpose, and to this end have nominated as their plenipotentiaries:

The President of the United States: George F. Summerlin, Chargé d'Affaires ad interim of the United States of America in Mexico.

The President of the United Mexican States: Alberto J. Pani, Secretary of State for Foreign Affairs:

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

All claims against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties during the revolutions and disturbed conditions which existed in Mexico, covering the period from November 20, 1910, to May 31, 1920, inclusive, including losses or damages suffered by citizens of the United States by reason of losses or damages suffered by any corporation, company, association or partnership in which citizens of the United States have or have had a substantial and bona fide interest, provided an allotment to the American claimant by the corporation, company, association or partnership of his proportion of the loss or damage is presented by the claimant to the Commission hereinafter referred to, and which claims have been presented to the United States for its interposition with Mexico, as well as any other such claims which may be presented within the time hereinafter specified, shall be submitted to a Commission consisting of three members.

Such Commission shall be constituted as follows: one member shall be appointed by the President of the United States; one by the President of the United Mexican States; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two governments. If the two governments shall not agree within two months from the exchange of ratifications of this convention in naming such third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article 49 of the Convention for the Pacific Settlement of International Disputes con-

¹ U. S. Treaty Series, No. 676.

cluded at The Hague on October 18, 1907. In case of the death, absence or incapacity of any member of the Commission, or in the event of a member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE II

The Commissioners so named shall meet at Mexico City within six months after the exchange of the ratifications of this convention, and each member of the Commission, before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of justice and equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Mexican Government desires that the claims shall be so decided because Mexico wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of international law, but *ex gratia* feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained and was due to any of the causes enumerated in Article III hereof.

The Commission may fix the time and place of its subsequent meetings, as may be convenient, subject always to the special instructions of the two governments.

ARTICLE III

The claims which the Commission shall examine and decide are those which arose during the revolutions and disturbed conditions which existed in Mexico covering the period from November 20, 1910, to May 31, 1920, inclusive, and were due to any act by the following forces:

- (1) By forces of a government *de jure* or *de facto*.
- (2) By revolutionary forces as a result of the triumph of whose cause governments *de facto* or *de jure* have been established, or by revolutionary forces opposed to them.
- (3) By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government *de jure* established itself as a result of a particular revolution.
- (4) By federal forces that were disbanded, and
- (5) By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions (2), (3) and (4) above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars.

ARTICLE IV

In general, the Commission shall adopt as the standard for its proceedings the rules of procedure established by the Mixed Claims Commission created under the Claims Convention between the two governments signed July 4, 1868, in so far as such rules are not in conflict with any provision of this convention. The Commission, however, shall have authority by the decision of the majority of its members to establish such other rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this convention.

Each government may nominate and appoint agents and counsel who will be authorized to present to the Commission, orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be Spanish or English.

ARTICLE V

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each government may appoint a secretary; these secretaries shall act as joint secretaries of the Commission and shall be subject to its instructions. Each government may also appoint and employ any necessary assistant secretaries and such other assistance as deemed necessary. The Commission may also appoint and employ any persons necessary to assist in the performance of its duties.

ARTICLE VI

Since the Mexican Government desires to arrive at an equitable settlement of the claims of the citizens of the United States and to grant them a just and adequate compensation for their losses or damages, the Mexican Government agrees that the Commission shall not disallow or reject any claim by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VII

Every claim shall be filed with the Commission within two years from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any case

the period for filing the claim may be extended not to exceed six additional months.

The Commission shall be bound to hear, examine and decide within five years from the date of its first meeting, all the claims filed.

Four months after the date of the first meeting of the Commissioners, and every four months thereafter, the Commission shall submit to each government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The Commission shall be bound to decide any claim heard and examined within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VIII

The high contracting parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon the Mexican Government, arising from any of the causes set forth in Article III of this convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission shall from and after the conclusion of the proceedings of the Commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

ARTICLE IX

The total amount awarded to claimants shall be paid in gold coin or its equivalent by the Mexican Government to the Government of the United States at Washington.

ARTICLE X

Each government shall pay its own Commissioner and bear its own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two governments.

ARTICLE XI

The present convention shall be ratified by the high contracting parties in accordance with their respective Constitutions. Ratifications of this convention shall be exchanged in Mexico City as soon as practicable and the convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this convention.

Done in duplicate at Mexico City this tenth day of September, 1923.

[SEAL] GEORGE F. SUMMERLIN.

[SEAL] A. J. PANI.

GENERAL CLAIMS CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND THE UNITED MEXICAN STATES,¹

Signed at Washington, September 8, 1923; ratifications exchanged at Washington, March 1, 1924

The United States of America and the United Mexican States, desiring to settle and adjust amicably claims by the citizens of each country against the other since the signing on July 4, 1868, of the Claims Convention entered into between the two countries (without including the claims for losses or damages growing out of the revolutionary disturbances in Mexico which form the basis of another and separate convention), have decided to enter into a convention with this object, and to this end have nominated as their plenipotentiaries:

The President of the United States of America: The Honorables Charles Evans Hughes, Secretary of State of the United States of America, Charles Beecher Warren and John Barton Payne, and

The President of the United Mexican States: Señor Don Manuel C. Téllez, Chargé d'Affaires ad interim of the United Mexican States at Washington;

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

All claims (except those arising from acts incident to the recent revolutions) against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America by citizens of Mexico, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in which such citizens have or have had a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the Commission hereinafter referred to; and all claims for losses or damages originating from acts of officials or others acting for either government and resulting in injustice, and which claims may have been presented to either government for its interposition with the other since the signing of the Claims Convention concluded between the two countries July 4, 1868, and which have remained unsettled, as well as any other such claims which may be filed by either government within the time hereinafter specified, shall be submit-

¹ U. S. Treaty Series, No. 678.

ted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity.

Such Commission shall be constituted as follows: one member shall be appointed by the President of the United States; one by the President of the United Mexican States; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two governments. If the two governments shall not agree within two months from the exchange of ratifications of this convention in naming such third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article XLIX of the Convention for the Pacific Settlement of International Disputes concluded at The Hague on October 18, 1907. In case of the death, absence or incapacity of any member of the Commission, or in the event of a member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE II

The Commissioners so named shall meet at Washington for organization within six months after the exchange of the ratifications of this convention, and each member of the Commission, before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of international law, justice and equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Commission may fix the time and place of its subsequent meetings, either in the United States or in Mexico, as may be convenient, subject always to the special instructions of the two governments.

ARTICLE III

In general, the Commission shall adopt as the standard for its proceedings the rules of procedure established by the Mixed Claims Commission created under the Claims Convention between the two governments signed July 4, 1868, in so far as such rules are not in conflict with any provision of this convention. The Commission, however, shall have authority by the decision of the majority of its members to establish such other rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this convention.

Each government may nominate and appoint agents and counsel who will be authorized to present to the Commission, orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation

before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be English or Spanish.

ARTICLE IV

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each government may appoint a secretary; these secretaries shall act as joint secretaries of the Commission and shall be subject to its instructions. Each government may also appoint and employ any necessary assistant secretaries and such other assistance as deemed necessary. The Commission may also appoint and employ any persons necessary to assist in the performance of its duties.

ARTICLE V

The high contracting parties, being desirous of effecting an equitable settlement of the claims of their respective citizens thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VI

Every such claim for loss or damage accruing prior to the signing of this convention, shall be filed with the Commission within one year from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed six additional months.

The Commission shall be bound to hear, examine and decide, within three years from the date of its first meeting, all the claims filed, except as hereinafter provided in Article VII.

Four months after the date of the first meeting of the Commissioners, and every four months thereafter, the Commission shall submit to each government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The Commission shall be bound to decide any claim heard and examined within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VII

The high contracting parties agree that any claim for loss or damage accruing after the signing of this convention, may be filed by either government

with the Commission at any time during the period fixed in Article VI for the duration of the Commission; and it is agreed between the two governments that should any such claim or claims be filed with the Commission prior to the termination of said Commission, and not be decided as specified in Article VI, the two governments will by agreement extend the time within which the Commission may hear, examine and decide such claim or claims so filed for such a period as may be required for the Commission to hear, examine and decide such claim or claims.

ARTICLE VIII

The high contracting parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either government, for loss or damage sustained prior to the exchange of the ratifications of the present convention (except as to claims arising from revolutionary disturbances and referred to in the preamble hereof). And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission shall from and after the conclusion of the proceedings of the Commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

ARTICLE IX

The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country and the balance shall be paid at Washington or at the City of Mexico, in gold coin or its equivalent to the government of the country in favor of whose citizens the greater amount may have been awarded.

In any case the Commission may decide that international law, justice and equity require that a property or right be restored to the claimant in addition to the amount awarded in any such case for all loss or damage sustained prior to the restitution. In any case where the Commission so decides the restitution of the property or right shall be made by the government affected after such decision has been made, as hereinbelow provided. The Commission, however, shall at the same time determine the value of the property or right decreed to be restored and the government affected may elect to pay the amount so fixed after the decision is made rather than to restore the property or right to the claimant.

In the event the government affected should elect to pay the amount fixed as the value of the property or right decreed to be restored, it is agreed that notice thereof will be filed with the Commission within thirty days after the decision and that the amount fixed as the value of the property or right shall

be paid immediately. Upon failure so to pay the amount the property or right shall be restored immediately.

ARTICLE X

Each government shall pay its own Commissioner and bear its own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two governments.

ARTICLE XI

The present convention shall be ratified by the high contracting parties in accordance with their respective Constitutions. Ratifications of this convention shall be exchanged in Washington as soon as practicable and the convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this convention.

Done in duplicate at Washington this eighth day of September, 1923.

[SEAL] CHARLES EVANS HUGHES.

[SEAL] CHARLES BEECHER WARREN.

[SEAL] JOHN BARTON PAYNE.

[SEAL] MANUEL C. TÉLLEZ.

CONVENTION AND STATUTE ON THE RÉGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN¹

Signed at Barcelona, April 20, 1921²

Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czecho-Slovakia, Uruguay, and Venezuela:

Desirous of carrying further the development as regards the international régime of navigation on internal waterways, which began more than a century ago, and which has been solemnly affirmed in numerous treaties,

Considering that general conventions to which other Powers may accede at a later date constitute the best method of realizing the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognizing in particular that a fresh confirmation of the principle of freedom of navigation in a statute elaborated by forty-one states belonging to the different portions of the world constitutes a new and significant stage

¹ British Treaty Series, No. 28 (1923). [Cmd. 1993].

² For ratifications and accessions, see note at end of additional protocol, p. 166.

towards the establishment of coöperation among states without in any way prejudicing their rights of sovereignty or authority,

Having accepted the invitation of the League of Nations to take part in a conference at Barcelona which met on the 10th March 1921, and having taken note of the Final Act of such conference,

Anxious to bring into force forthwith the provisions of the Statute relating to the Régime of Navigable Waterways of International Concern which has there been adopted,

Wishing to conclude a convention for this purpose; the high contracting parties have appointed as their plenipotentiaries:

The President of the Supreme Council of Albania: Monsignor Fan S. Noli, Member of Parliament.

The President of the Republic of Austria: M. Henri Reinhardt, Ministerial Councillor.

His Majesty the King of the Belgians: M. Xavier Neujean, Minister for Railways, Marine, Posts and Telegraphs.

The President of the Republic of Bolivia: M. Trifon Melean, Bolivian Consul in Spain.

His Majesty the King of Bulgaria: M. Lubin Bochkoff, Civil Engineer, Assistant to the Director-General of Railways and Ports.

The President of the Republic of Chile: Señor Manuel Rivas Vicuña, Envoy Extraordinary and Minister Plenipotentiary.

The President of the Republic of China: M. Ouang Yong-Pao, Envoy Extraordinary and Minister Plenipotentiary.

His Majesty the King of Denmark and of Iceland: M. Peter Andreas Holck-Colding, Chef de Bureau in the Ministry of Public Works.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: Sir Hubert Llewellyn Smith, G.C.B., Economic Adviser to the Government;

and for the Dominion of New Zealand: Sir Hubert Llewellyn Smith, G. C. B.

for India: Sir Louis James Kershaw, K.C.S.I., C.I.E., Secretary in the Revenue and Statistics Department in the India Office.

His Majesty the King of Spain: Señor Don Emilio Ortuño y Berte, Member of the Chamber of Deputies, formerly Minister of Public Works.

The President of the Esthonian Republic: M. Charles Robert Pusta, Minister Plenipotentiary.

The President of the Republic of Finland: M. Rolf Thesleff, Envoy Extraordinary and Minister Plenipotentiary.

The President of the French Republic: M. Maurice Sibille, Deputy, Member of the Comité consultatif des Chemins de fer français.

His Majesty the King of the Hellenes: M. G. Caradja, Minister Plenipotentiary.

The President of the Republic of Guatemala: Dr. Norberto Galvez, Guatemalan Consul-General at Barcelona.

His Majesty the King of Italy: M. Paolo Bignami, Engineer, Member of the Chamber of Deputies, former Under-Secretary of State.

The President of the Lithuanian Republic: M. V. Sidzikauskas, Chargé d'Affaires at Berne.

Her Royal Highness the Grand-Duchess of Luxemburg: M. Antoine Lefort, Chargé d'Affaires at Berne.

His Majesty the King of Norway: Dr. Fridtjof Nansen, Professor in Christiania University.

The President of the Republic of Panama: Dr. Evenor Hazera, Consul-General for Panama in Spain, former Under-Secretary of State.

The President of the Polish Republic: M. Joseph Wielowieyski.

The President of the Portuguese Republic: M. Alfredo Freire d'Andrade, formerly Minister of Foreign Affairs.

His Majesty the King of Sweden: M. Fredrik V. Hansen, Director-General of Hydraulic Power and State Canals.

The President of the Czecho-Slovak Republic: M. Bohuslav Müller, Engineer, Secretary of State at the Ministry of Public Works, Envoy Extraordinary and Minister Plenipotentiary.

The President of the Oriental Republic of Uruguay: M. Benjamin Fernandez y Medina, Envoy Extraordinary and Minister Plenipotentiary to Spain;

Who, after communicating their full powers, found in good and due form, have agreed as follows:

ARTICLE 1

The high contracting parties declare that they accept the Statute on the Régime of Navigable Waterways of International Concern annexed hereto, adopted by the Barcelona Conference on the 19th April 1921.

This statute will be deemed to constitute an integral part of the present convention. Consequently, they hereby declare that they accept the obligations and undertakings of the said statute in conformity with the terms and in accordance with the conditions set out therein.

ARTICLE 2

The present convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on the 28th June 1919, or out of the provisions of the other corresponding treaties, in so far as they concern the Powers which have signed, or which benefit by, such treaties.

ARTICLE 3

The present convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until the 1st December 1921.

ARTICLE 4

The present convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other members of the League and to states admitted to sign the convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present convention upon the deposit of the first ratification.

ARTICLE 5

Members of the League of Nations which have not signed the present convention before the 1st December 1921, may accede to it.

The same applies to states not members of the League to which the Council of the League may decide officially to communicate the present convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 6

The present convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present convention will take effect in the case of each party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present convention, the Secretary-General will address a certified copy of it to the Powers not members of the League which are bound under the treaties of peace to accede to it.

ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the parties have signed, ratified, acceded to or denounced the present convention. This record shall be open to the members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

ARTICLE 8

Subject to the provisions of Article 2 of the present convention, the latter may be denounced by any party thereto after the expiration of five years from the date when it came into force in respect of that party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other parties, informing them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power. It shall not, in the absence of an agreement to the contrary, prejudice engagements entered into before the denunciation relating to a programme of works.

ARTICLE 9

A request for the revision of the present convention may be made at any time by one-third of the high contracting parties.

In faith whereof the above-named plenipotentiaries have signed the present convention.

Done at Barcelona the twentieth day of April one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the archives of the League of Nations.

FAN S. NOLI.

REINHARDT.

XAVIER NEUJEAN.

TRIFON MELEAN.

L. BOCHKOFF.

MANUEL RIVAS VICUÑA.

OUANG YONG-PAO.

A. HOLCK-COLDING.

HUBERT LLEWELLYN SMITH.

Subject to the declaration inserted in the *procès-verbal* of the meeting of April 19th, 1921; as to the British Dominions which have not been represented at the Barcelona Conference.*

H. LLEWELLYN SMITH.

L. J. KERSHAW.

E. ORTUÑO.

C. R. PUSTA.

ROLF THESLEFF.

MAURICE SIBILLE.

G. CARADJA.

N. GALVEZ S.

PAOLO BIGNAMI.

V. SIDZIKAIUSKAS.

LEFORT.

FRIDTJOF NANSSEN.

EVENOR HAZERA.

JOSEPH WIELOVIEYSKI.

A. FREIRE D'ÁNDRADE.

FREDRIK HANSEN.

ING. BOHUSLAV MÜLLER.

B. FERNANDEZ Y MEDINA.

* The text of the declaration reads as follows:

"At the time of signing this convention, and as representative of the British Empire, I declare that my signature is not binding upon the British Dominions of Canada, Australia and South Africa, which are individual members of the League of Nations and have not sent representatives to this conference. The right of each of these three Dominions to sign the convention, or to accede to it at a later date, is reserved, it being understood that, if they do not sign or accede to it, they shall not be entitled to benefit by the convention.

Statute on the Régime of Navigable Waterways of International Concern

ARTICLE 1

In the application of the statute, the following are declared to be navigable waterways of international concern:

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different states, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different states.

It is understood that:

- (a) Transshipment from one vessel to another is not excluded by the words "navigable to and from the sea";
- (b) Any natural waterway or part of a natural waterway is termed "naturally navigable" if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by "ordinary commercial navigation" is to be understood navigation which, in view of the economic condition of the riparian countries, is commercial and normally practicable;
- (c) Tributaries are to be considered as separate waterways;
- (d) Lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto;
- (e) The different states separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be "riparian states."

2. Waterways, or parts of waterways, whether natural or artificial, expressly declared to be placed under the régime of the general convention regarding navigable waterways of international concern either in unilateral acts of the states under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent, in particular, of such states.

ARTICLE 2

For the purpose of Articles 5, 10, 12 and 14 of this statute, the following shall form a special category of navigable waterways of international concern:

- (a) Navigable waterways for which there are international commissions upon which non-riparian states are represented;
- (b) Navigable waterways which may hereafter be placed in this category, either in pursuance of unilateral acts of the states under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such states.

"I also reserve the right to declare, at the time of ratification, whether the ratification includes the Dominion of Newfoundland. If it is not included in the ratification, the Dominion of Newfoundland will not be entitled to benefit by the convention."

ARTICLE 3

Subject to the provisions contained in Articles 5 and 17, each of the contracting states shall accord free exercise of navigation to the vessels flying the flag of any one of the other contracting states on those parts of navigable waterways specified above which may be situated under its sovereignty or authority.

ARTICLE 4

In the exercise of navigation referred to above, the nationals, property and flags of all contracting states shall be treated in all respects on a footing of perfect equality. No distinction shall be made between the nationals, the property and the flags of the different riparian states, including the riparian state exercising sovereignty or authority over the portion of the navigable waterway in question: similarly, no distinction shall be made between the nationals, the property and the flags of riparian and non-riparian states. It is understood, in consequence, that no exclusive right of navigation shall be accorded on such navigable waterways to companies or to private persons.

No distinction shall be made in the said exercise, by reason of the point of departure or of destination, or of the direction of the traffic.

ARTICLE 5

As an exception to the two preceding articles, and in the absence of any convention or obligation to the contrary:

1. A riparian state has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A state which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 2, the act of navigation shall only allow to riparian states the right of reserving the local transport of passengers or of goods which are of national origin or are nationalized. In every case, however, in which greater freedom of navigation may have been already established, in a previous act of navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 2 separates or traverses two states only, the latter have the right to reserve to their flags, by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same state in the course of a voyage, effected without transshipment on the territory of either of the said

states, involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system.

ARTICLE 6

Each of the contracting states maintains its existing right, on the navigable waterways or parts of navigable waterways referred to in Article 1 and situated under its sovereignty or authority, to enact the stipulations and to take the measures necessary for policing the territory and for applying the laws and regulations relating to customs, public health, precautions against the diseases of animals and plants, emigration or immigration, and to the import or export of prohibited goods, it being understood that such stipulations and measures must be reasonable, must be applied on a footing of absolute equality between the nationals, property and flags of any one of the contracting states, including the state which is their author, and must not without good reason impede the freedom of navigation.

ARTICLE 7

No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterways and its approaches, or to meet expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses, and the tariff of dues shall be posted in the ports. These dues shall be levied in such a manner as to render unnecessary a detailed examination of the cargo, except in cases of suspected fraud or infringement of regulations, and so as to facilitate international traffic as much as possible, both as regards their rates and the method of their application.

ARTICLE 8

The transit of vessels and of passengers and goods on navigable waterways of international concern shall, so far as customs formalities are concerned, be governed by the conditions laid down in the Statute of Barcelona on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable:

- (a) When both banks of a waterway of international concern are within one and the same state, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock or in the custody of customs officers.
- (b) When a navigable waterway of international concern forms the frontier between two states, vessels, passengers and goods in transit shall while "en route" be exempt from any customs formality, except in cases in which there are valid reasons of a practical char-

acter for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels and passengers, as well as the transit of goods without transshipment, on navigable waterways of international concern, must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorized by Article 3 of that statute. It is nevertheless understood that vessels in transit may be made responsible for the board and lodging of any customs officers who are strictly required for supervision.

ARTICLE 9

Subject to the provisions of Articles 5 and 17, the nationals, property and flags of all the contracting states shall, in all ports situated on a navigable waterway of international concern, enjoy, in all that concerns the use of the port, including port dues and charges, a treatment equal to that accorded to the nationals, property and flag of the riparian state under whose sovereignty or authority the port is situated. It is understood that the property to which the present paragraph relates is property originating in, coming from or destined for, one or other of the contracting states.

The equipment of ports situated on a navigable waterway of international concern, and the facilities afforded in these ports to navigation, must not be withheld from public use to an extent beyond what is reasonable and fully compatible with the free exercise of navigation.

In the application of customs or other analogous duties, local octroi or consumption duties, or incidental charges, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the transport has been or is to be accomplished, whether this flag be the national flag or that of any of the contracting states.

The state under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that state, including companies controlled by such nationals.

In the absence of special circumstances justifying an exception on the ground of economic necessities, the customs duties must not be higher than those levied on the other customs frontiers of the state interested, on goods of the same kind, source and destination. All facilities accorded by the contracting states to the importation or exportation of goods by other land or water routes, or in other ports, shall be equally accorded to importation or exportation under the same conditions over the navigable waterway and through the ports referred to above.

ARTICLE 10

1. Each riparian state is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway, or to reduce the facilities for navigation, and on the other hand, to take as rapidly as possible all necessary steps for removing any obstacles and dangers which may occur to navigation.

2. If such navigation necessitates regular upkeep of the waterway, each of the riparian states is bound as towards the others to take such steps and to execute such works on its territory as are necessary for the purpose as quickly as possible, taking account at all times of the conditions of navigation, as well as of the economic state of the regions served by the navigable waterway.

In the absence of an agreement to the contrary, any riparian state will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep.

3. In the absence of legitimate grounds for opposition by one of the riparian states, including the state territorially interested based either on the actual conditions of navigability in its territory, or on other interests such as, *inter alia*, the maintenance of the normal-water conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication, a riparian state may not refuse to carry out works necessary for the improvement of the navigability which are asked for by another riparian state, if the latter state offers to pay the cost of the works and a fair share of the additional cost of upkeep. It is understood, however, that such works cannot be undertaken so long as the state on the territory of which they are to be carried out objects on the ground of vital interests.

4. In the absence of any agreement to the contrary, a state which is obliged to carry out works of upkeep is entitled to free itself from the obligation, if, with the consent of all the co-riparian states, one or more of them agree to carry out the works instead of it; as regards works for improvement, a state which is obliged to carry them out shall be freed from the obligation, if it authorizes the state which made the request to carry them out instead of it. The carrying out of works by states other than the state territorially interested, or the sharing by such states in the cost of works, shall be so arranged as not to prejudice the rights of the state territorially interested as regards the supervision and administrative control over the works, or its sovereignty and authority over the navigable waterway.

5. On the waterways referred to in Article 2, the provisions of the present article are to be applied subject to the terms of the treaties, conventions, or navigation acts which determine the powers and responsibilities of the International Commission in respect of works.

Subject to any special provisions in the said treaties, conventions, or navigation acts, which exist or may be concluded:

- (a) Decisions in regard to works will be made by the Commission.
- (b) The settlement, under the conditions laid down in Article 22 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international conventions governing navigable waterways. A request for a settlement under the afore-said conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of this Commission shall be in conformity with the provisions of the present article.

6. Notwithstanding the provisions of paragraph 1 of this article, a riparian state may, in the absence of any agreement to the contrary, close a waterway wholly or in part to navigation, with the consent of all the riparian states or of all the states represented on the International Commission in the case of navigable waterways referred to in Article 2:

As an exceptional case one of the riparian states of a navigable waterway of international concern not referred to in Article 2 may close the waterway to navigation, if the navigation on it is of very small importance, and if the state in question can justify its action on the ground of an economic interest clearly greater than that of navigation. In this case the closing to navigation may only take place after a year's notice and subject to an appeal on the part of any other riparian state under the conditions laid down in Article 22. If necessary, the judgment shall prescribe the conditions under which the closing to navigation may be carried into effect.

7. Should access to the sea be afforded by a navigable waterway of international interest through several branches, all of which are situated in the territory of one and the same state, the provisions of paragraphs 1, 2 and 3 of this article shall apply only to the principal branches deemed necessary for providing free access to the sea.

ARTICLE 11

If on a waterway of international concern one or more of the riparian states are not parties to this statute, the financial obligations undertaken by each of the contracting states in pursuance of Article 10 shall not exceed those to which they would have been subject if all the riparian states had been parties.

ARTICLE 12

In the absence of contrary stipulations contained in a special agreement or treaty, for example, existing conventions concerning customs and police measures and sanitary precautions, the administration of navigable waterways of international concern is exercised by each of the riparian states under whose sovereignty or authority the navigable waterway is situated. Each of such riparian states has, *inter alia*, the power and duty of publishing

regulations for the navigation of such waterway and of seeing to their execution. These regulations must be framed and applied in such a way as to facilitate the free exercise of navigation under the conditions laid down in this statute.

The rules of procedure dealing with such matters as ascertaining, prosecuting and punishing navigation offences must be such as to promote as speedy a settlement as possible.

Nevertheless the contracting states recognize that it is highly desirable that the riparian states should come to an understanding with regard to the administration of the navigable waterway and, in particular, with regard to the adoption of navigation regulations of as uniform a character throughout the whole course of such navigable waterway as the diversity of local circumstances permits.

Public services of towage or other means of haulage may be established in the form of monopolies for the purpose of facilitating the exercise of navigation, subject to the unanimous agreement of the riparian states or the states represented on the International Commission in the case of navigable waterways referred to in Article 2.

ARTICLE 13

Treaties, conventions or agreements in force relating to navigable waterways, concluded by the contracting states before the coming into force of this statute, are not, as a consequence of its coming into force, abrogated so far as concerns the states signatories to those treaties.

Nevertheless the contracting states undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present statute.

ARTICLE 14

If any of the special agreements or treaties referred to in Article 12 has entrusted or shall hereafter entrust certain functions to an international commission which includes representatives of states other than the riparian states, it shall be the duty of such commission subject to the provisions of Article 10, to have exclusive regard to the interests of navigation, and it shall be deemed to be one of the organizations referred to in Article 24 of the Covenant of the League of Nations. Consequently, it will exchange all useful information directly with the League and its organizations, and will submit an annual report to the League.

The powers and duties of the commissions referred to in the preceding paragraph shall be laid down in the act of navigation of each navigable waterway and shall at least include the following:

- (a) the commission shall be entitled to draw up such navigation regulations as it thinks necessary itself to draw up, and all other navigation regulations shall be communicated to it;

- (b) it shall indicate to the riparian states the action advisable for the upkeep of works and the maintenance of navigability;
- (c) it shall be furnished by each of the riparian states with official information as to all schemes for the improvement of the waterway;
- (d) it shall be entitled, in cases in which the act of navigation does not include a special regulation with regard to the levying of dues, to approve of the levying of such dues and charges in accordance with the provisions of Article 7 of this statute.

ARTICLE 15

This statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The statute shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 16

This statute does not impose upon a contracting state any obligation conflicting with its rights and duties as a member of the League of Nations.

ARTICLE 17

In the absence of any agreement to the contrary to which the state territorially interested is or may be a party, this statute has no reference to the navigation of vessels of war or of vessels performing police or administrative functions, or, in general, exercising any kind of public authority.

ARTICLE 18

Each of the contracting states undertakes not to grant either by agreement or in any other way, to a non-contracting state, treatment with regard to navigation over a navigable waterway of international concern which, as between contracting states, would be contrary to the provisions of this statute.

ARTICLE 19

The measures of a general or particular character which a contracting state is obliged to take in case of an emergency affecting the safety of the state or the vital interests of the country may, in exceptional cases and for a period as short as possible, involve a deviation from the provisions of the above articles; it being understood that the principle of the freedom of navigation and especially communication between the riparian states and the sea, must be maintained to the utmost possible extent.

ARTICLE 20

This statute does not entail in any way the withdrawal of existing greater facilities granted to the free exercise of navigation on any navigable waterway of international concern, under conditions consistent with the principle of

equality laid down in this statute, as regards the nationals, the goods and the flags of all the contracting states; nor does it entail the prohibition of such grant of greater facilities in the future.

ARTICLE 21

In conformity with Article 23 (e) of the Covenant of the League of Nations, any contracting state which can establish a good case against the application of any provision of this statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of navigation must be observed as far as possible.

ARTICLE 22

Without prejudice to the provisions of paragraph 5 of Article 10, any dispute between states as to the interpretation or application of this statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the contracting states undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organization of the members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

ARTICLE 23

A navigable waterway shall not be considered as of international concern on the sole ground that it traverses or delimits zones or enclaves, the extent and population of which are small as compared with those of the territories which it traverses, and which form detached portions or establishments belonging to a state other than that to which the said river belongs, with this exception, throughout its navigable course.

ARTICLE 24

This statute shall not be applicable to a navigable waterway of international concern which has only two riparian states and which separates, for a

considerable distance, a contracting state from a non-contracting state whose government is not recognized by the former at the time of the signing of this statute, until an agreement has been concluded between them establishing, for the waterway in question, an administrative and customs régime which affords suitable safeguards to the contracting state.

ARTICLE 25

It is understood that this statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part, or placed under the protection, of the same sovereign state, whether or not these territories are individually members of the League of Nations.

Additional Protocol to the Convention on the Régime of Navigable Waterways of International Concern

Barcelona, April 20, 1921

1. The states signatories of the convention on the Régime of Navigable Waterways of International Concern, signed at Barcelona on the 20th April, 1921, whose duly authorized representatives have affixed their signatures to the present protocol, hereby declare that, in addition to the freedom of communications which they have conceded by virtue of the Convention on Navigable Waterways considered as of international concern, they further concede, on condition of reciprocity, without prejudice to their rights of sovereignty, and in time of peace,

(a) on all navigable waterways,

(b) on all naturally navigable waterways,

which are placed under their sovereignty or authority, and which, not being considered as of international concern, are accessible to ordinary commercial navigation to and from the sea, and also in all the ports situated on these waterways, perfect equality of treatment for the flags of any state signatory of this protocol as regards the transport of imports and exports without transshipment.

At the time of signing, the signatory states must declare whether they accept the obligation to the full extent indicated under paragraph (a) above, or only to the more limited extent defined by paragraph (b).

It is understood that states which have accepted paragraph (a) are not bound as regards those which have accepted paragraph (b), except under the conditions resulting from the latter paragraph.

It is also understood that those states which possess a large number of ports (situated on navigable waterways) which have hitherto remained closed to international commerce, may, at the time of the signing of the present protocol, exclude from its application one or more of the navigable waterways referred to above.

The signatory states may declare that their acceptance of the present pro-

protocol does not include any or all of the colonies, overseas possessions or protectorates under their sovereignty or authority, and they may subsequently adhere separately on behalf of any colony, overseas possession or protectorate so excluded in their declaration. They may also denounce the protocol separately in accordance with its provisions in respect of any colony, overseas possession or protectorate under their sovereignty or authority.

The present protocol shall be ratified. Each Power shall send its ratification to the Secretary-General of the League of Nations, who shall cause notice of such ratification to be given to all the other signatory Powers; these ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The present protocol shall remain open for the signature or adherence of the states which have signed the above-mentioned convention or have given their adherence to it.

It shall come into force after the Secretary-General of the League of Nations has received the ratification of two states; provided, however, that the said convention has come into force by that time.

It may be denounced at any time after the expiration of a period of two years dating from the time of the reception by the Secretary-General of the League of Nations of the ratification of the denouncing state. The denunciation shall not take effect until one year after it has been received by the Secretary-General of the League of Nations. A denunciation of the Convention on the Régime of Navigable Waterways of International Concern shall be considered as including a denunciation of the present protocol.

NOTE

Ratifications deposited

British Empire*.....	}	Aug. 2, 1922
New Zealand.....		
India.....		
Albania.....		Oct. 18, 1921
Bulgaria.....		July 11, 1922
Denmark.....		Nov. 13, 1922
Finland.....		Jan. 29, 1923
Italy.....		Aug. 5, 1922
Norway.....		Sept. 4, 1923

* Deemed to apply to Newfoundland, but not to Canada, South Africa or Australia.

Accessions

(To the full extent indicated in paragraph (a) of the Additional Protocol.)
 Newfoundland, Bahamas, Barbados, British Guiana, Jamaica (including Turks and Caicos Islands and Cayman Islands), Leeward Islands, Trinidad and Tobago, Windward Islands (Grenada, St. Lucia, St. Vincent), Gibraltar, Malta, Cyprus, Gambia Colony and Protectorate, Sierra Leone Colony and

Protectorate, Nigeria Colony and Protectorate, Gold Coast, Ashanti and Northern Territories of the Gold Coast, Kenya Colony and Protectorate, Uganda Protectorate, Zanzibar, St. Helena, Ceylon, Mauritius, Seychelles, Hong Kong, Straits Settlements, Fiji, Gilbert and Ellice Islands, British Solomon Island, Tonga Islands.—August 2, 1922.

Federated Malay States and Unfederated Malay States.—September 2, 1923.

Siam.—Nov. 29, 1923.

(To the limited extent defined by paragraph (b) of the Additional Protocol.)

Nyasaland Protectorate and Tanganyika Territory.—August 2, 1922.

Roumania.—June 19, 1923.

Palestine * (territory under British mandate).—Jan. 24, 1924.

DECLARATION RECOGNIZING THE RIGHT TO A FLAG OF STATES HAVING NO
SEA COAST¹

Signed at Barcelona, April 20, 1921².

The undersigned, duly authorized for the purpose, declare that the states which they represent recognize the flag flown by the vessels of any state having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

Barcelona, the 20th April, 1921, done in a single copy of which the English and French texts shall be authentic.

B. FERNÁNDEZ Y MEDINA	(Uruguay)
P. SCASSI	(Greece)
MOTTA	(Switzerland)
EVENOR HAZERA	(Panama)
TRIFON MELEAN	(Bolivia)
GERMAIN ALBAT	(Latvia)
N. GÁLVEZ S	(Guatemala)
JOSEPH WIELOVIEYSKI	(Poland)
LUBIN BOCHKOFF	(Bulgaria)
REINHARDT	(Austria)
FREDRIK HANSEN	(Sweden)
XAVIER NEUJEAN	(Belgium)
MAURICE SIBILLE	(France)
OUANG YONG-PAO	(China)
VAN PANHUYS	(Netherlands)
E. ORTUÑO	(Spain)

* Information not available as to whether accession is under paragraph (a) or (b) of the Additional Protocol.—Ed.

¹ British Treaty Series No. 29 (1923), [Cmd. 1994].

² For ratifications and accessions, see note at end of declaration, p. 168.

V. SIDZIKAIUSKAS	(Lithuania)
HUSSEIN KHAN ALAI	(Persia)
A. HOLCK-COLDING	(Denmark)
MANUEL RIVAS VICUÑA	(Chile)
PAOLO BIGNAMI	(Italy)
A. FREIRE D'ANDRADE	(Portugal)
A. TRESIC PAVICIC	(Serb-Croat-Slovene Kingdom)
ING. BOHUŠLAV MÜLLER	(Czechoslovakian Republic)
FRIDTJOF NANSEN	(Norway)
H. LLEWELLYN SMITH	(British Empire)

Subject to the declaration inserted in the *procès-verbal* of the meeting of the 19th April, 1921, as to the British Dominions which have not been represented at the Barcelona Conference.—H. LI. S.*

H. LLEWELLYN SMITH.	(New Zealand)
L. J. KERSHAW	(India)
C. R. PUSTA	(Estonia)
FAN S. NOLI	(Albania)
M. MATSUDA	(Japan)

NOTE

Ratifications deposited.

British Empire.....	} Oct. 9, 1922
New Zealand.....	
India.....	
Albania.....	Oct. 18, 1921
Bulgaria.....	July 11, 1922
Denmark.....	Nov. 13, 1922
Norway.....	Sept. 4, 1923

Accessions

Finland.....	Sept. 22, 1922
Canada.....	} Oct. 31, 1922
Australia.....	
South Africa.....	

* The text of the declaration reads as follows:—

"At the time of signing this convention, and as representative of the British Empire, I declare that my signature is not binding upon the British Dominions of Canada, Australia and South Africa, which are individual members of the League of Nations and have not sent representatives to this conference. The right of each of these three Dominions to sign the convention, or to accede to it at a later date, is reserved, it being understood that, if they do not sign or accede to it, they shall not be entitled to benefit by the convention.

"I also reserve the right to declare, at the time of ratification, whether the ratification includes the Dominion of Newfoundland. If it is not included in the ratification, the Dominion of Newfoundland will not be entitled to benefit by the convention."

TREATY BETWEEN THE UNITED STATES OF AMERICA AND SIAM PROVIDING
FOR THE EXTRADITION OF FUGITIVES FROM JUSTICE¹

*Signed at Bangkok, December 30, 1922; ratifications exchanged at Bangkok,
March 24, 1924*

The United States of America and Siam, desiring to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice, between the two countries, and have appointed for that purpose the following plenipotentiaries:

The President: Edward E. Brodie, Envoy Extraordinary and Minister Plenipotentiary of the United States to Siam, and

His Majesty the King: His Royal Highness Prince Devawongse Varopakara, Minister for Foreign Affairs,

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

It is agreed that the Government of the United States and the Government of Siam shall, upon requisition duly made as herein provided, deliver up to justice any person, over whom they respectively exercise jurisdiction who may be charged with, or may have been convicted of, any of the crimes specified in Article II of the present treaty committed within the jurisdiction of one of the high contracting parties, and who shall seek an asylum or shall be found within the territories of the other; provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.

ARTICLE II

Persons shall be delivered up according to the provisions of the present treaty, who shall have been charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms parricide, assassination, manslaughter, when voluntary, poisoning, or infanticide.
2. The attempt to commit murder.
3. Rape, abortion, carnal knowledge of children under the age of twelve years.
4. Abduction or detention of women or girls for immoral purposes.
5. Bigamy.
6. Arson.
7. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

¹ U. S. Treaty Series, No. 681.

8. Crimes committed at sea:

(a) Piracy, as commonly known and defined by the law of nations, or by statute;

(b) Wrongfully sinking or destroying a vessel at sea or attempting to do so;

(c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel;

(d) Assault on board ship upon the high seas with intent to do bodily harm.

9. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.

10. The act of breaking into and entering the offices of the government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance and other companies, or other buildings not dwellings with intent to commit a felony therein.

11. Robbery, defined to be the act of feloniously and forcibly taking from the person of another goods or money by violence or by putting him in fear.

12. Forgery or the utterance of forged papers.

13. The forgery or falsification of the official acts of the government or public authority, including courts of justice, or the uttering of fraudulent use of any of the same.

14. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by national, state, provincial, territorial, local or municipal governments, bank notes or other instruments of public credit, counterfeit seals, stamps, dies and marks of state or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.

15. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars or Siamese equivalent.

16. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars or Siamese equivalent.

17. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them, their families, or any other person or persons, or for any other unlawful end.

18. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more, or Siamese equivalent.

19. Obtaining money, valuable securities or other property by false pretences or receiving any money, valuable securities or other property knowing

the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds two hundred dollars or Siamese equivalent.

20. Perjury or subornation of perjury.

21. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director or officer of any company or corporation, or by anyone in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars or Siamese equivalent.

22. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.

23. Wilful desertion or wilful non-support of minor or dependent children.

24. Extradition shall also take place for participation in any of the crimes before mentioned as an accessory before or after the fact; provided such participation be punishable by imprisonment by the laws of both the high contracting parties.

ARTICLE III

The provisions of the present treaty shall not import a claim of extradition for any crime or offense of a political character, nor for acts connected with such crimes or offenses; and no person surrendered by or to either of the high contracting parties in virtue of this treaty shall be tried or punished for a political crime or offense. When the offense charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offense was committed or attempted against the life of the sovereign or head of a foreign state or against the life of any member of his family, shall not be deemed sufficient to sustain that such crime or offense was of a political character; or was an act connected with crimes or offenses of a political character.

ARTICLE IV

No person shall be tried for any crime or offense other than that for which he was surrendered.

ARTICLE V

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

ARTICLE VI

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offense committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until

such proceedings be determined, and until he shall have been set at liberty in due course of law.

ARTICLE VII

If a fugitive criminal claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that state whose demand is first received.

ARTICLE VIII

Under the stipulations of this treaty, neither of the high contracting parties shall be bound to deliver up its own citizens.

ARTICLE IX

The expense of arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offense, or which may be material as evidence in making proof of the crime, shall so far as practicable, according to the laws of either of the high contracting parties, be delivered up with his person at the time of surrender. Nevertheless, the rights of a third party with regard to the articles referred to shall be duly respected.

ARTICLE XI

The stipulations of the present treaty shall be applicable to all territory wherever situated, belonging to either of the high contracting parties or in the occupancy and under the control of either of them, during such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the high contracting parties. In the event of the absence of such agents from the country of its seat of government, or where extradition is sought from territory included in the preceding paragraphs, other than the United States or Siam, requisitions may be made by superior consular officers. It shall be competent for such diplomatic or superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or

magistrate to certify it to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

In case of urgency, the application for arrest and detention may be addressed directly to the competent magistrate in conformity to the statutes in force.

The person provisionally arrested shall be released, unless within two months from the date of arrest in Siam, or from the date of commitment in the United States, the formal requisition for surrender with the documentary proofs hereinafter prescribed be made as aforesaid by the diplomatic agent of the demanding government or, in his absence, by a consular officer thereof.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

ARTICLE XII

In every case of a request made by either of the high contracting parties for the arrest, detention or extradition of fugitive criminals, the appropriate legal officers of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition before the respective judges and magistrates; by every legal means within their power; and no claim whatever for compensation for any of the services so rendered shall be made against the government demanding the extradition; provided, however, that any officer or officers of the surrendering government so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE XIII

The present treaty shall be ratified by the high contracting parties in accordance with their respective constitutional methods and shall take effect on the date of the exchange of ratifications which shall take place at Bangkok as soon as possible.

ARTICLE XIV

The present treaty shall remain in force for a period of ten years, and in case neither of the high contracting parties shall have given notice one year before the expiration of that period of its intention to terminate the treaty,

it shall continue in force until the expiration of one year from the date on which such notice of termination shall be given by either of the high contracting parties.

In witness whereof the above named plenipotentiaries have signed the present treaty and have hereunto affixed their seals.

Done in duplicate at Bangkok this thirtieth day of December, nineteen hundred and twenty-two.

[SEAL] EDWARD E. BRODIE.

[SEAL] DEYAWONGSE.

TREATY AND ADDITIONAL ARTICLE BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF VENEZUELA PROVIDING FOR THE EXTRADITION OF FUGITIVES FROM JUSTICE¹

Signed at Caracas, January 19 and 21, 1922; ratifications exchanged at Caracas, April 14, 1923.

The United States of America and the United States of Venezuela, desiring to strengthen their reciprocal relations, to facilitate the course of punitive justice and to limit the crimes which may be committed in their respective territories; to prevent the impunity which would result from the escape of guilty persons and of their asylum in the territory of one or the other nation, have resolved to conclude a treaty for the extradition of the accused as well as of those who have been sentenced, and have appointed for that purpose the following plenipotentiaries:

The President of the United States of America, John Campbell White, Chargé d'Affaires ad interim of the United States of America to Venezuela, and

The Provisional President of the United States of Venezuela, Doctor Pedro Itriago Chacín, Minister of Foreign Affairs of the United States of Venezuela;

Who, after having exchanged their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I

The Government of the United States of America and the Government of the United States of Venezuela agree to deliver up to justice, by means of requisition duly made as herein provided, any person who may be charged with or may have been convicted of any of the crimes committed within the jurisdiction of one of the contracting parties and specified in Article II of this convention, while said person was actually within such jurisdiction when the crime was committed, and who shall seek an asylum or who shall be found within the territories of the other. Such surrender shall take place only upon

¹ U. S. Treaty Series, No. 675.

such evidence of guilt as, according to the laws of the country in which the fugitive or accused shall be found, would justify his detention and commitment for trial if the crime or offense had been committed there.

ARTICLE II

In accordance with the provisions of this convention, the persons shall be delivered who shall have been charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, manslaughter, when voluntary; poisoning or infanticide.

2. The attempt to commit murder.

3. Rape, abortion, carnal knowledge of children under the age of twelve years:

4. Bigamy.

5. Arson.

6. Willful and unlawful destruction or obstruction of railroads, which endangers human life.

7. Crimes committed at sea:

(a) Piracy, as commonly known and defined by the law of nations, or by statute;

(b) Wrongfully sinking or destroying a vessel at sea or attempting to do so.

(c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel or by fraud or violence taking possession of such vessel;

(d) Assault on board ships upon the high seas with intent to do bodily harm.

8. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.

9. The act of breaking into and entering into the offices of the government and public authorities, or the offices of banks, banking houses, saving banks, trust companies, insurance companies, or other buildings not dwellings with intent to commit a felony therein.

10. Robbery, defined to be the act of feloniously and forcibly taking from the person of another, goods or money by violence or by putting him in fear.

11. Forgery or the utterance of forged papers, or illegal sale of documents belonging to the national archives.

12. The forgery or falsification of the official acts of the government or public authority, including courts of justice, or the uttering or fraudulent use of the same.

13. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by national, state, provincial, territorial, local or municipal governments, banknotes or other instruments

of public credit, counterfeit seals, stamps, dies and marks of state or public administrations, and the utterance, circulation, or fraudulent use of the above mentioned objects.

14. Embezzlement or criminal malversation committed within the jurisdiction of one of the parties by public officers or depositaries, where the amount embezzled exceeds 200 dollars in the United States of America or B. 1.000 in the United States of Venezuela.

15. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds 200 dollars in the United States of America or B. 1.000 in the United States of Venezuela.

16. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or their families, or for any other unlawful end.

17. Larceny, defined to be the theft of effects, personal property, or money, of the value of 50 dollars or B. 250 or more, accordingly.

18. Obtaining money, valuable securities or other property by false pretenses or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds 200 dollars in the United States of America or B. 1.000 in the United States of Venezuela.

19. Perjury or subornation of perjury.

20. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director, or officer of any company or corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds 200 dollars in the United States of America or B. 1.000 in the United States of Venezuela.

21. The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by imprisonment by the laws of both contracting parties.

ARTICLE III

The provisions of this convention shall not import claim of extradition for any crime or offense of a political character, nor for acts connected with such crimes or offenses; and no person surrendered by or to either of the contracting parties in virtue of this convention shall be tried or punished for a political crime or offense. When the offense charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offense was committed or attempted against the life of the sovereign or head of a foreign state or against the life of any member of his family, shall not be deemed sufficient to sustain that such a crime or offense was of a political character, or was an act connected with crimes or offenses of a political character.

ARTICLE IV

In view of the abolition of capital punishment and of imprisonment for life by constitutional provision in Venezuela, the contracting parties reserve the right to decline to grant extradition for crimes punishable by death and life imprisonment. Nevertheless, the executive authority of each of the contracting parties shall have the power to grant extradition for such crimes upon the receipt of satisfactory assurances that, in case of conviction the death penalty or imprisonment for life will not be inflicted.

ARTICLE V

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the country within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

ARTICLE VI

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof shall be at the time of the request for the extradition under prosecution, either at liberty out on bail or in custody, for any crime or offense committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and until he shall have been set at liberty in due course of law.

ARTICLE VII

If a fugitive criminal claimed by one of the parties hereto shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that state whose demand is first received.

ARTICLE VIII

Under the stipulations of this convention, neither of the contracting parties shall be bound to deliver up its own citizens.

ARTICLE IX

The expense of the arrest, detention, examination, and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offense, or which may be material as evidence in making proof of the crime, shall, so far as practicable according to the laws of either of the contracting parties be delivered up

with his person at the time of the surrender. Nevertheless, the rights of a third party with regard to the articles aforesaid shall be duly respected.

ARTICLE XI

The stipulations of this convention shall be applicable to all territories wherever situated, belonging to either of the contracting parties or under the jurisdiction or control of either of them.

Applications for the surrender of fugitives shall be made by the respective diplomatic agents of the contracting parties. In case of the absence of such agents from the country or its seat of government, or where extradition is sought from territory included in the preceding paragraph other than the United States, application may be made by superior consular officers.

It shall be competent for such diplomatic or superior consular officers to ask and obtain the preliminary arrest of the person whose surrender is requested, before the government of whom such request is made. The judicial functionaries shall prescribe the method of complying with the legal formalities of the country of which the extradition is requested.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

ARTICLE XII

If when a person accused shall have been arrested in virtue of the mandate or preliminary warrant of arrest, issued by the competent authority as provided in Article XI hereof, and been brought before a judge or a magistrate to the end that the evidence of his or her guilt may be heard and examined as hereinbefore provided, it shall appear that the mandate or preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the government asking for the extradition, it shall be competent to hold the accused for a period not exceeding two months, so that the demanding government may have opportunity to lay before such judge or magistrate legal evidence of the guilt of the accused, and if at the expiration of said period of two months such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall be released, provided that the examination of the charges preferred against such accused person shall not be actually going on.

ARTICLE XIII

In every case of a request made by either of the two contracting parties for the arrest, detention or extradition of fugitive criminals, the legal officers or

fiscal ministry of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition before the respective judges and magistrates, by every legal means within their or its power; and no claim whatsoever for compensation for any of the services so rendered shall be made against the government demanding the extradition, provided, however, that any officer or officers of the surrendering government so giving assistance who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE XIV.

No person shall be tried for any crime or offense other than that for which he was surrendered.

ARTICLE XV

This convention shall take effect from the day of the exchange of the ratifications thereof; but either contracting party may at any time terminate the same on giving to the other six months' notice of its intention to do so.

The ratifications of the present convention shall be exchanged at Caracas as soon as possible.

In witness whereof the respective plenipotentiaries have signed the above articles, and have hereunto affixed their seals.

Done in duplicate, in Caracas, this nineteenth day of January one thousand nine hundred and twenty-two.

[SEAL] JOHN CAMPBELL WHITE.

[SEAL] P. ITRIAGO CHACÍN.

The undersigned, John Campbell White, Chargé d'Affaires ad interim of The United States of America to Venezuela, and Dr. Pedro Itriago Chacín, Minister of Foreign Affairs of The United States of Venezuela, have agreed upon the following additional article to the treaty of extradition signed by the aforesaid on the nineteenth instant:

It is agreed that all differences between the contracting parties relating to the interpretation or execution of this treaty shall be decided by arbitration.

In witness whereof they have signed the above article, and have hereunto affixed their seals.

Done in duplicate, in Caracas, this twenty first day of January one thousand nine hundred and twenty-two.

[SEAL] JOHN CAMPBELL WHITE.

[SEAL] P. ITRIAGO CHACÍN.

OFFICIAL DOCUMENTS

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND BULGARIA¹

Signed at Sofia, May 19, 1924; ratifications exchanged at Sofia, June 24, 1924

The United States of America and Bulgaria desiring to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the two countries and have appointed for that purpose the following plenipotentiaries:

The President of the United States of America,

Charles S. Wilson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Bulgaria, and

His Majesty, the King of the Bulgarians,

Christo Kalfoff, Minister for Foreign Affairs and Worship of Bulgaria.

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

It is agreed that the Government of the United States and the Government of Bulgaria shall, upon requisition duly made as herein provided, deliver up to justice any person, who may be charged with, or may have been convicted of, any of the crimes specified in Article II of the present treaty committed within the jurisdiction of one of the high contracting parties, and who shall seek an asylum or shall be found within the territories of the other; provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.

ARTICLE II

Persons shall be delivered up according to the provisions of the present treaty, who shall have been charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms parricide, assassination, manslaughter when voluntary, poisoning or infanticide.
2. The attempt to commit murder.
3. Rape, abortion, carnal knowledge of children under the age of twelve years.

¹ U. S. Treaty Series, No. 687.

4. Abduction or detention of women or girls for immoral purposes.
5. Bigamy.
6. Arson.
7. Wilful and unlawful destruction or obstruction of railroads, which endangers human life.
8. Crimes committed at sea:
 - (a) Piracy, as commonly known and defined by the law of nations, or by statute;
 - (b) Wrongfully sinking or destroying a vessel at sea or attempting to do so;
 - (c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel;
 - (d) Assault on board ship upon the high seas with intent to do bodily harm.
9. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.
10. The act of breaking into and entering the offices of the government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance and other companies, or other buildings not dwellings with intent to commit a felony therein.
11. Robbery, defined to be the act of feloniously and forcibly taking from the person of another goods or money by violence or by putting him in fear.
12. Forgery or the utterance of forged papers.
13. The forgery or falsification of the official acts of the government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.
14. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by national, state, provincial, territorial, local or municipal governments, bank notes or other instruments of public credit, counterfeit seals, stamps, dies and marks of State or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.
15. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds one hundred dollars or Bulgarian equivalent.
16. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment, by the laws of both countries, and where the amount embezzled exceeds one hundred dollars or Bulgarian equivalent.
17. Kidnapping of minors or adults, defined to be the abduction or deten-

tion of a person or persons, in order to exact money from them, their families or any other person or persons, or for any other unlawful end.

18. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more, or Bulgarian equivalent.

19. Obtaining money, valuable securities or other property, by false pretences or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds one hundred dollars or Bulgarian equivalent.

20. Perjury or subornation of perjury.

21. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director or officer of any company or corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds one hundred dollars or Bulgarian equivalent.

22. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.

23. Wilful desertion or wilful non-support of minor or dependent children.

24. Extradition shall also take place for participation in any of the crimes before mentioned as an accessory before or after the fact; provided such participation be punishable by imprisonment by the laws of both the high contracting parties.

ARTICLE III

The provisions of the present treaty shall not import a claim of extradition for any crime or offense of a political character, nor for acts connected with such crimes or offenses; and no person surrendered by or to either of the high contracting parties in virtue of this treaty shall be tried or punished for a political crime or offense. When the offense charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offense was committed or attempted against the life of the sovereign or head of a foreign state or against the life of any member of his family, shall not be deemed sufficient to sustain that such crime or offense was of a political character; or was an act connected with crimes or offenses of a political character.

ARTICLE IV

No person shall be tried for any crime or offense other than that for which he was surrendered.

ARTICLE V

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal

is exempt from prosecution or punishment for the offense for which the surrender is asked.

ARTICLE VI

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offense committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and until he shall have been set at liberty in due course of law.

ARTICLE VII

If a fugitive criminal claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that state whose demand is first received.

ARTICLE VIII

Under the stipulations of this treaty, neither of the high contracting parties shall be bound to deliver up its own citizens.

ARTICLE IX

The expense of arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offense, or which may be material as evidence in making proof of the crime, shall so far as practicable, according to the laws of either of the high contracting parties, be delivered up with his person at the time of surrender. Nevertheless, the rights of a third party with regard to the articles referred to, shall be duly respected.

ARTICLE XI

The stipulations of the present treaty shall be applicable to all territory wherever situated, belonging to either of the high contracting parties or in the occupancy and under the control of either of them, during such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the high contracting parties. In the event of the absence of such agent from the country or its seat of government, or where extradition is sought from territory included in the preceding paragraphs, other than the United States or Bulgaria, requisitions may be made by superior consular officers. It shall be competent for such diplomatic or

superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify it to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

In case of urgency, the application for arrest and detention may be addressed directly to the competent magistrate in conformity to the statutes in force.

The person provisionally arrested shall be released, unless within three months from the date of arrest in Bulgaria, or from the date of commitment in the United States, the formal requisition for surrender with the documentary proofs hereinafter prescribed be made as aforesaid by the diplomatic agent of the demanding government or, in his absence, by a consular officer thereof.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

ARTICLE XII

In every case of a request made by either of the high contracting parties for the arrest, detention or extradition of fugitive criminals, the appropriate legal officers of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition before the respective judges and magistrates, by every legal means within their power; and no claim whatever for compensation for any of the services so rendered shall be made against the government demanding the extradition; provided, however, that any officer or officers of the surrendering government so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE XIII

The present treaty shall be ratified by the high contracting parties in accordance with their respective constitutional methods and shall take effect on the date of the exchange of ratifications which shall take place at Sofia, as soon as possible.

ARTICLE XIV

The present treaty shall remain in force for a period of ten years, and in case neither of the high contracting parties shall have given notice one year before the expiration of that period of its intention to terminate the treaty, it shall continue in force until the expiration of one year from the date on which such notice of termination shall be given by either of the high contracting parties.

In witness whereof the above-named plenipotentiaries have signed the present treaty and have hereunto affixed their seals.

Done in duplicate at Sofia this nineteenth day of March nineteen hundred and twenty-four.

[SEAL] CHARLES S. WILSON.

[SEAL] CHR. KALFOFF.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND DENMARK FOR
THE PREVENTION OF SMUGGLING OF INTOXICATING LIQUORS ¹

*Signed at Washington, May 29, 1924; ratifications exchanged at
Washington, July 25, 1924*

The President of the United States of America and His Majesty the King of Denmark and Iceland being desirous of avoiding any difficulties which might arise between the United States and Denmark in connection with the laws in force in the United States on the subject of alcoholic beverages have decided to conclude a convention for that purpose, and have appointed as their plenipotentiaries:

The President of the United States of America, Mr. Charles Evans Hughes, Secretary of State of the United States; and

His Majesty the King of Denmark and Iceland, Mr. Kai Helmer-Petersen, His Majesty's Chargé d'Affaires at Washington,

Who, having communicated their full powers found in good and due form, have agreed as follows:

ARTICLE I

The high contracting parties respectively retain their rights and claims, without prejudice by reason of this agreement, with respect to the extent of their territorial jurisdiction.

¹ U. S. Treaty Series, No. 693.

ARTICLE II

(1) His Majesty the King of Denmark and Iceland agrees that he will raise no objection to the boarding of private vessels under the Danish flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be initiated.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

ARTICLE III

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board Danish vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE IV

Any claim by a Danish vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article II of this treaty or on the ground that it has not

been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the high contracting parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Permanent Court of Arbitration at The Hague described in the Convention for the Pacific Settlement of International Disputes, concluded at The Hague, October 18, 1907. The arbitral tribunal shall be constituted in accordance with Article 87 (Chapter IV) and with Article 59 (Chapter III) of the said convention. The proceedings shall be regulated by so much of Chapter IV of the said convention and of Chapter III thereof (special regard being had for Articles 70 and 74, but excepting Articles 53 and 54) as the tribunal may consider to be applicable and to be consistent with the provisions of this agreement. All sums of money which may be awarded by the tribunal on account of any claim shall be paid within eighteen months after the date of the final award without interest and without deduction, save as hereafter specified. Each government shall bear its own expenses. The expenses of the tribunal shall be defrayed by a ratable deduction of the amount of the sums awarded by it, at a rate of five per cent. on such sums, or at such lower rate as may be agreed upon between the two governments; the deficiency, if any, shall be defrayed in equal moieties by the two governments.

ARTICLE V

This treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the high contracting parties may give notice of its desire to propose modifications in the terms of the treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the treaty, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the treaty shall lapse.

ARTICLE VI

In the event that either of the high contracting parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each high

contracting party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

The present convention shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Denmark and Iceland; and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective plenipotentiaries have signed the present convention in duplicate in the English and Danish languages and have thereunto affixed their seals.

Done at the city of Washington this twenty-ninth day of May one thousand nine hundred and twenty-four.

[SEAL] CHARLES EVANS HUGHES.

[SEAL] HELMER PETERSEN.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND FRANCE RELATING TO THE PART OF THE CAMEROONS UNDER FRENCH MANDATE ¹

Signed at Paris, February 13, 1923; ratifications exchanged at Paris, June 3, 1924

The President of the United States of America and the President of the French Republic:

Whereas by Article 119 of the Treaty of Peace signed at Versailles the 28th of June, 1919, Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions; and

Whereas by Article 22 of the same instrument it was provided that certain territories which, as a result of the war, had ceased to be under the sovereignty of the states which formerly governed them, should be placed under the mandate of another Power, and that the terms of the mandate should be explicitly defined in each case by the Council of the League of Nations; and

Whereas the benefits accruing under the aforesaid Article 119 of the Treaty of Versailles were confirmed to the United States by the treaty between the United States and Germany, signed August 25, 1921, to restore friendly relations between the two nations; and

Whereas four of the Principal Allied and Associated Powers, to wit: the British Empire, France, Italy and Japan, agreed that France should exercise the mandate for part of the former German colony of the Cameroons; and

Whereas the terms of the said mandate have been defined by the Council of the League of Nations as follows:

ARTICLE 1.—The territory for which a mandate is conferred upon France comprises that part of the Cameroons which lies to the east of the line laid down in the declaration signed on July 10th, 1919, of which copy is annexed hereto.²

¹ U. S. Treaty Series, No. 690.

² The declaration is printed in Supplement to the AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 17, pp. 141-145, and therefore is not reprinted here.—MANAGING EDITOR.

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interest of the inhabitants or by reason of any inaccuracies in the map Moisel 1/300,000, annexed to the declaration, to adhere strictly to the line laid down therein.

The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said declaration.

The final report of the mixed commission shall give the exact description of the boundary line as traced on the spot; maps signed by the commissioners shall be annexed to the report. This report with its annexes shall be drawn up in triplicate; one of these shall be deposited in the archives of the League of Nations, one shall be kept by the Government of the Republic and one by His Britannic Majesty's Government.

ARTICLE 2.—The Mandatory shall be responsible for the peace, order and good government of the territory and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.

ARTICLE 3.—The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military force except for local police purposes and for the defence of the territory.

It is understood, however, that the troops thus raised may, in the event of general war, be utilized to repel an attack or for defence of the territory outside that subject to the mandate.

ARTICLE 4.—The Mandatory:

(1) Shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) Shall suppress all forms of slave trade;

(3) Shall prohibit all forms of forced or compulsory labor, except for essential public works and services, and then only in return for adequate remuneration;

(4) Shall protect the natives from measures of fraud and force by the careful supervision of labor contracts and the recruiting of labor;

(5) Shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

ARTICLE 5.—In the framing of laws relating to the holding or transference of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favor of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

ARTICLE 6.—The Mandatory shall secure to all nationals of states members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person and property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of states members of the League of Nations, on the same footing as his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; provided that the Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all states members of the League of Nations, but on such conditions as will maintain intact the authority of the local government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal

character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources, either directly by the state or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

ARTICLE 7.—The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of states members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

ARTICLE 8.—The Mandatory shall apply to the territory any general international conventions applicable to his contiguous territory.

ARTICLE 9.—The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply his laws to the territory subject to the mandate with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control; provided always that the measures adopted to that end do not infringe the provisions of this mandate.

ARTICLE 10.—The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council. This report shall contain full information concerning the measures taken to apply the provisions of this mandate.

ARTICLE 11.—The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

ARTICLE 12.—The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations,

Whereas the United States of America, by participating in the war against Germany, contributed to her defeat and to the renunciation of her rights and titles over her oversea possessions, but has not ratified the Treaty of Versailles; and

Whereas the Government of the United States and the Government of the French Republic desire to reach a definite understanding with regard to the rights of the two governments and their respective nationals in the aforesaid former German colony of the Cameroons;

Have decided to conclude a convention to this effect, and have nominated as their respective plenipotentiaries, that is to say:

The President of the United States of America:

His Excellency Mr. Myron T. Herrick, Ambassador Extraordinary and Plenipotentiary of the United States of America at Paris:

And the President of the French Republic:

M. Raymond Poincaré, Senator, President of the Council, Minister of Foreign Affairs;

Who, after communicating to each other their respective full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1

Subject to the provisions of the present convention, the United States consents to the administration by the Government of the French Republic, pursuant to the aforesaid mandate, of the former German territory, described in Article 1 of the mandate.

ARTICLE 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of Articles 2, 3, 4, 5, 6, 7, 8 and 9 of the mandate to members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

ARTICLE 3

Vested American property rights in the mandated territory shall be respected and in no way impaired.

ARTICLE 4

A duplicate of the annual report to be made by the Mandatory under Article 10 of the mandate shall be furnished to the United States.

ARTICLE 5

Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited above unless such modification shall have been assented to by the United States.

ARTICLE 6

The extradition treaties and conventions in force between the United States and France shall apply to the mandated territory.

ARTICLE 7

The present convention shall be ratified in accordance with the respective constitutional methods of the high contracting parties. The ratifications shall be exchanged in Paris as soon as practicable. It shall take effect on the date of the exchange of ratifications.

In witness whereof the respective plenipotentiaries have signed this convention and have affixed thereto their seals.

Done in duplicate at Paris, the 13th day of February, in the year 1923.

[SEAL] MYRON T. HERRICK.

[SEAL] R. POINCARÉ.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND FRANCE
RELATING TO THE PART OF TOGOLAND UNDER FRENCH MANDATE ¹

*Signed at Paris, February 13, 1923; ratifications exchanged at Paris,
June 3, 1923*

The President of the United States of America and the President of the French Republic:

Whereas by Article 119 of the Treaty of Peace signed at Versailles the 28th of June, 1919, Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions; and

Whereas by Article 22 of the same instrument it was provided that certain territories, which as a result of the war had ceased to be under the sovereignty of the States which formerly governed them, should be placed under the mandate of another Power, and that the terms of the mandate should be explicitly defined in each case by the Council of the League of Nations; and

Whereas the benefits accruing under the aforesaid Article 119 of the Treaty of Versailles were confirmed to the United States by the treaty between the United States and Germany, signed August 25, 1921, to restore friendly relations between the two nations; and

Whereas four of the Principal Allied and Associated Powers, to wit: the British Empire, France, Italy and Japan, agreed that France should exercise the mandate for part of the former German colony of Togoland; and

Whereas the terms of the said mandate have been defined by the Council of the League of Nations as follows:

ARTICLE 1.—The territory over which a mandate is conferred upon France comprises that part of Togoland which lies to the east of the line laid down in the declaration signed on July 10, 1919, of which a copy is annexed hereto.²

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interest of the inhabitants or by reason of any inaccuracies in the map, Sprigade 1:200,000, annexed to the declaration, to adhere strictly to the line laid down therein.

The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said declaration.

The final report of the mixed commission shall give the exact description of the boundary line as traced on the spot; maps signed by the commissioners shall be annexed to the report.

¹ U. S. Treaty Series, No. 691.

² The declaration is printed in Supplement to the AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 17, pp. 186-190, and therefore is not reprinted here.—MANAGING EDITOR.

This report with its annexes shall be drawn up in triplicate: one of these shall be deposited in the archives of the League of Nations, one shall be kept by the Government of the Republic and one by His Britannic Majesty's Government.

ARTICLE 2.—The Mandatory shall be responsible for the peace, order and good government of the territory and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.

ARTICLE 3.—The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military force except for local police purposes and for the defence of the territory.

It is understood, however, that the troops thus raised may, in the event of general war, be utilized to repel an attack or for the defence of the territory outside that subject to the mandate.

ARTICLE 4.—The Mandatory:

1. Shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

2. Shall suppress all forms of slave trade;

3. Shall prohibit all forms of forced or compulsory labor, except for essential public works and services, and then only in return for adequate remuneration;

4. Shall protect the natives from measures of fraud and force by the careful supervision of labor contracts and the recruiting of labor;

5. Shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

ARTICLE 5.—In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favor of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

ARTICLE 6.—The Mandatory shall secure to all nationals of states members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person and property, and acquisition of property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of states members of the League of Nations, on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; except that Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all states members of the League of Nations, but on such conditions as will maintain intact the authority of the local government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources, either directly by the state or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

ARTICLE 7.—The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of states members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

ARTICLE 8.—The Mandatory shall apply to the territory any general international conventions applicable to his contiguous territory.

ARTICLE 9.—The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply his laws to the territory subject to the mandate, with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal, or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate.

ARTICLE 10.—The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council. This report shall contain full information concerning the measures taken to apply the provisions of this mandate.

ARTICLE 11.—The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

ARTICLE 12.—The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations,

Whereas the United States of America, by participating in the war against Germany, contributed to her defeat and to the renunciation of her rights and titles over her oversea possessions, but has not ratified the Treaty of Versailles; and

Whereas the Government of the United States and the Government of the French Republic desire to reach a definite understanding with regard to the rights of the two governments and their respective nationals in the aforesaid former German colony of Togoland:

Have decided to conclude a convention to this effect, and have nominated as their respective plenipotentiaries, that is to say:

The President of the United States of America:

His Excellency Mr. Myron T. Herrick, Ambassador Extraordinary and Plenipotentiary of the United States of America at Paris,

And the President of the French Republic:

M. Raymond Poincaré, Senator, President of the Council, Minister of Foreign Affairs;

Who, after communicating to each other their respective full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1

Subject to the provisions of the present convention, the United States consents to the administration by the Government of the French Republic, pursuant to the aforesaid mandate, of the former German territory, described in Article 1 of the mandate.

ARTICLE 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of Articles 2, 3, 4, 5, 6, 7, 8 and 9 of the mandate to members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

ARTICLE 3

Vested American property rights in the mandated territory shall be respected and in no way impaired.

ARTICLE 4

A duplicate of the annual report to be made by the Mandatory under Article 10 of the mandate shall be furnished to the United States.

ARTICLE 5

Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited above unless such modification shall have been assented to by the United States.

ARTICLE 6

The extradition treaties and conventions in force between the United States and France shall apply to the mandated territory.

ARTICLE 7

The present convention shall be ratified in accordance with the respective constitutional methods of the high contracting parties. The ratifications shall be exchanged in Paris as soon as practicable. It shall take effect on the date of the exchange of ratifications.

In witness whereof the respective plenipotentiaries have signed this convention and have affixed thereto their seals.

Done in duplicate at Paris, the 13th day of February, in the year 1923.

[SEAL] MYRON T. HERRICK.

[SEAL] R. POINCARÉ.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND NORWAY FOR
THE PREVENTION OF SMUGGLING OF INTOXICATING LIQUORS ¹

*Signed at Washington, May 24, 1924; ratifications exchanged at Washington,
July 2, 1924*

The President of the United States of America and His Majesty the King of Norway being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages have decided to conclude a Convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America, Charles Evans Hughes, Secretary of State of the United States;

His Majesty the King of Norway, Helmer H. Bryn, His Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

Who, having communicated their full powers found in good and due form, have agreed as follows:

ARTICLE I

The high contracting parties respectively retain their rights and claims, without prejudice by reason of this agreement with respect to the extent of their territorial jurisdiction.

ARTICLE II

(1) His Majesty agrees that he will raise no objection to the boarding of private vessels under the Norwegian flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be initiated.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States its territories or possessions by a vessel other

¹ U. S. Treaty Series, No. 689.

than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

ARTICLE III

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board Norwegian vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE IV

Any claim by a Norwegian vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article II of this treaty or on the ground that it has not been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the high contracting parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Permanent Court of Arbitration at The Hague described in the Convention for the Pacific Settlement of International Disputes, concluded at The Hague, October 18, 1907. The arbitral tribunal shall be constituted in accordance with Article 87 (Chapter IV) and with Article 59 (Chapter III) of the said convention. The proceedings shall be regulated by so much of Chapter IV of the said convention and of Chapter III thereof (special regard being had for Articles 70 and 74, but excepting Articles 53 and 54) as the tribunal may consider to be applicable and to be consistent with the provisions of this agreement. All sums of money which may be awarded by the tribunal on account of any claim shall be paid within eighteen months after the date of the final award without interest and without deduction, save as hereafter specified. Each government shall bear its own expenses. The expenses of the tribunal shall be defrayed by a ratable deduction of the amount of the sums awarded by it, at a rate of five per cent, on such sums, or at such lower rate as may be agreed upon between the two governments; the deficiency, if any, shall be defrayed in equal moieties by the two governments.

ARTICLE V

This treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the high contracting parties may give notice of its desire to propose modifications in the terms of the treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the treaty, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the treaty shall lapse.

ARTICLE VI

In the event that either of the high contracting parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each high contracting party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

The present convention shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Norway; and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective plenipotentiaries have signed the present convention in duplicate in the English and Norwegian languages and have thereunto affixed their seals.

Done at the city of Washington this twenty-fourth day of May, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL] CHARLES EVANS HUGHES.

[SEAL] HELMER H. BRYN.

TREATY BETWEEN THE UNITED STATES AND OTHER POWERS RELATING TO
SPITZBERGEN ¹

*Signed at Paris, February 9, 1920; Ratifications of the United States
deposited with the Government of France, April 2, 1924*

The President of the United States of America; His Majesty the King of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Denmark; the Presi-

¹ U. S. Treaty Series, No. 686.

dent of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; His Majesty the King of Sweden,

Désirous, while recognizing the sovereignty of Norway over the Archipelago of Spitsbergen; including Bear Island, of seeing these territories provided with an equitable régime, in order to assure their development and peaceful utilization,

Have appointed as their respective plenipotentiaries with a view to concluding a treaty to this effect:

The President of the United States of America:

Mr. Hugh Campbell Wallace, Ambassador Extraordinary and Plenipotentiary of the United States of America at Paris;

His Majesty the King of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

The Right Honorable the Earl of Derby, K. G., G. C. V. O., C. B., His Ambassador Extraordinary and Plenipotentiary at Paris;

And

for the Dominion of Canada:

The Right Honorable Sir George Halsey Perley, K. C. M. G., High Commissioner for Canada in the United Kingdom;

for the Commonwealth of Australia:

The Right Honorable Andrew Fisher, High Commissioner for Australia in the United Kingdom;

for the Dominion of New Zealand:

The Right Honorable Sir Thomas MacKenzie, K. C. M. G., High Commissioner for New Zealand in the United Kingdom;

for the Union of South Africa:

Mr. Reginald Andrew Blankenberg, O. B. E., Acting High Commissioner for South Africa in the United Kingdom;

for India:

The Right Honorable the Earl of Derby, K. G., G. C. V. O., C. B.;

His Majesty the King of Denmark:

Mr. Herman Anker Bernhoft, Envoy Extraordinary and Minister Plenipotentiary of H. M. the King of Denmark at Paris;

The President of the French Republic:

Mr. Alexandre Millerand, President of the Council, Minister for Foreign Affairs;

His Majesty the King of Italy:

The Honorable Maggiorino Ferraris, Senator of the Kingdom;

His Majesty the Emperor of Japan:

Mr. K. Matsui, Ambassador Extraordinary and Plenipotentiary of H. M. the Emperor of Japan at Paris;

His Majesty the King of Norway:

Baron Wedel Jarlsberg, Envoy Extraordinary and Minister Plenipotentiary of H. M. the King of Norway at Paris;
Her Majesty the Queen of the Netherlands:

Mr. John Loudon, Envoy Extraordinary and Minister Plenipotentiary of H. M. the Queen of the Netherlands at Paris;
His Majesty the King of Sweden:

Count J.-J.-A. Ehrensvärd, Envoy Extraordinary and Minister Plenipotentiary of H. M. the King of Sweden at Paris;

Who, having communicated their full powers, found in good and due form, have agreed as follows:

ARTICLE 1

The high contracting parties undertake to recognize, subject to the stipulations of the present treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen, comprising, with Bear Island or Beeren-Eiland, all the islands situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North, especially West Spitsbergen, North-East Land, Barents Island, Edge Island, Wiche Islands, Hope Island or Hopen-Eiland, and Prince Charles Foreland, together with all islands great or small and rocks appertaining thereto (see annexed map).¹

ARTICLE 2

Ships and nationals of all the high contracting parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters.

Norway shall be free to maintain, take or decree suitable measures to insure the preservation and, if necessary, the re-constitution of the fauna and flora of the said regions, and their territorial waters; it being clearly understood that these measures shall always be applicable equally to the nationals of all the high contracting parties without any exemption, privilege or favor whatsoever, direct or indirect to the advantage of any one of them.

Occupiers of land whose rights have been recognized in accordance with the terms of Articles 6 and 7 will enjoy the exclusive right of hunting on their own land; (1) in the neighborhood of their habitations, houses, stores, factories and installations, constructed for the purpose of developing their property, under conditions laid down by the local police regulations; (2) within a radius of 10 kilometres round the headquarters of their place of business or works; and in both cases, subject always to the observance of regulations made by the Norwegian Government in accordance with the conditions laid down in the present article.

ARTICLE 3

The nationals of all the high contracting parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and

¹ Not reproduced.

ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.

They shall be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters, and no monopoly shall be established on any account or for any enterprise whatever.

Notwithstanding any rules relating to coasting trade which may be in force in Norway, ships of the high contracting parties going to or coming from the territories specified in Article 1 shall have the right to put into Norwegian ports on their outward or homeward voyage for the purpose of taking on board or disembarking passengers or cargo going to or coming from the said territories, or for any other purpose.

It is agreed that in every respect and especially with regard to exports, imports and transit traffic, the nationals of all the high contracting parties, their ships and goods shall not be subject to any charges or restrictions whatever which are not borne by the nationals, ships or goods which enjoy in Norway the treatment of the most favored nation; Norwegian nationals, ships or goods being for this purpose assimilated to those of the other high contracting parties, and not treated more favorably in any respect.

No charge or restriction shall be imposed on the exportation of any goods to the territories of any of the contracting Powers other or more onerous than on the exportation of similar goods to the territory of any other contracting Power (including Norway) or to any other destination.

ARTICLE 4

All public wireless telegraphy stations established or to be established by, or with the authorization of, the Norwegian Government within the territories referred to in Article 1 shall always be open on a footing of absolute equality to communications from ships of all flags and from nationals of the high contracting parties, under the conditions laid down in the Wireless Telegraphy Convention of July 5, 1912, or in the subsequent international convention which may be concluded to replace it.

Subject to international obligations arising out of a state of war, owners of landed property shall always be at liberty to establish and use for their own purposes wireless telegraphy installations, which shall be free to communicate on private business with fixed or moving wireless stations, including those on board ships and aircraft.

ARTICLE 5

The high contracting parties recognize the utility of establishing an international meteorological station in the territories specified in Article 1, the organization of which shall form the subject of a subsequent convention.

Conventions shall also be concluded laying down the conditions under which scientific investigations may be conducted in the said territories.

ARTICLE 6

Subject to the provisions of the present article, acquired rights of nationals of the high contracting parties shall be recognized.

Claims arising from taking possession or from occupation of land before the signature of the present treaty shall be dealt with in accordance with the annex hereto, which will have the same force and effect as the present treaty.

ARTICLE 7

With regard to methods of acquisition, enjoyment and exercise of the right of ownership of property, including mineral rights, in the territories specified in Article 1, Norway undertakes to grant to all nationals of the high contracting parties treatment based on complete equality and in conformity with the stipulations of the present treaty.

Expropriation may be resorted to only on grounds of public utility and on payment of proper compensation.

ARTICLE 8

Norway undertakes to provide for the territories specified in Article 1 mining regulations which, especially from the point of view of imposts, taxes or charges of any kind, and of general or particular labor conditions, shall exclude all privileges, monopolies or favors for the benefit of the state or of the nationals of any one of the high contracting parties, including Norway, and shall guarantee to the paid staff of all categories the remuneration and protection necessary for their physical, moral and intellectual welfare.

Taxes, dues and duties levied shall be devoted exclusively to the said territories and shall not exceed what is required for the object in view.

So far, particularly, as the exportation of minerals is concerned, the Norwegian Government shall have the right to levy an export duty which shall not exceed 1% of the maximum value of the minerals exported up to 100,000 tons, and beyond that quantity the duty will be proportionately diminished. The value shall be fixed at the end of the navigation season by calculating the average free on board price obtained.

Three months before the date fixed for their coming into force, the draft mining regulations shall be communicated by the Norwegian Government to the other contracting Powers. If during this period one or more of the said Powers propose to modify these regulations before they are applied, such proposals shall be communicated by the Norwegian Government to the other contracting Powers in order that they may be submitted to examination and the decision of a Commission composed of one representative of each of the said Powers. This Commission shall meet at the invitation of the Norwegian

Government and shall come to a decision within a period of three months from the date of its first meeting. Its decisions shall be taken by a majority.

ARTICLE 9

Subject to the rights and duties resulting from the admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes.

ARTICLE 10

Until the recognition by the high contracting parties of a Russian Government shall permit Russia to adhere to the present treaty, Russian nationals and companies shall enjoy the same rights as nationals of the high contracting parties.

Claims in the territories specified in Article 1 which they may have to put forward shall be presented under the conditions laid down in the present treaty (Article 6 and annex) through the intermediary of the Danish Government, who declare their willingness to lend their good offices for this purpose.

The present treaty, of which the French and English texts are both authentic, shall be ratified.

Ratifications shall be deposited at Paris as soon as possible.

Powers of which the seat of the government is outside Europe may confine their action to informing the Government of the French Republic, through their diplomatic representative at Paris, that their ratification has been given, and in this case, they shall transmit the instrument as soon as possible.

The present treaty will come into force, in so far as the stipulations of Article 8 are concerned, from the date of its ratification by all the signatory Powers; and in all other respects on the same date as the mining regulations provided for in that article.

Third Powers will be invited by the Government of the French Republic to adhere to the present treaty duly ratified. This adhesion shall be effected by a communication addressed to the French Government, which will undertake to notify the other contracting parties.

In witness whereof the above-named plenipotentiaries have signed the present treaty.

Done at Paris, the ninth day of February, 1920, in duplicate, one copy to be transmitted to the Government of His Majesty the King of Norway, and one deposited in the archives of the French Republic; authenticated copies will be transmitted to the other signatory powers.

(L. S.) HUGH C. WALLACE.

(L. S.) ANDREW FISHER.

(L. S.) DERBY.

(L. S.) TH. MACKENZIE.

(L. S.) GEORGE H. PERLEY.

(L. S.) R. A. BLANKENBERG.

(L. S.) DERBY.

(L. S.) K. MATSUI.

(L. S.) H. A. BERNHOFT.

(L. S.) WEDEL JARLSBERG.

(L. S.) A. MILLERAND.

(L. S.) J. LOUDON.

(L. S.) MAGGIORINO FERRARIS.

(L. S.) J. EHRENSVÄRD.

ANNEX

1

(1) Within three months from the coming into force of the present treaty, notification of all claims to land which had been made to any government before the signature of the present treaty must be sent by the government of the claimant to a commissioner charged to examine such claims. The Commissioner will be a judge or juriconsult of Danish nationality possessing the necessary qualifications for the task, and shall be nominated by the Danish Government.

(2) The notification must include a precise delimitation of the land claimed and be accompanied by a map on a scale of not less than 1/1,000,000 on which the land claimed is clearly marked.

(3) The notification must be accompanied by the deposit of a sum of one penny for each acre (40 ares) of land claimed, to defray the expenses of the examination of the claims.

(4) The Commissioner will be entitled to require from the claimants any further documents or information which he may consider necessary.

(5) The Commissioner will examine the claims so notified. For this purpose he will be entitled to avail himself of such expert assistance as he may consider necessary, and in case of need to cause investigations to be carried out on the spot.

(6) The remuneration of the Commissioner will be fixed by agreement between the Danish Government and the other governments concerned. The Commissioner will fix the remuneration of such assistants as he considers it necessary to employ.

(7) The Commissioner, after examining the claims, will prepare a report showing precisely the claims which he is of opinion should be recognized at once and those which, either because they are disputed or for any other reason, he is of opinion should be submitted to arbitration as hereinafter provided. Copies of this report will be forwarded by the Commissioner to the governments concerned.

(8) If the amount of the sums deposited in accordance with clause (3) is insufficient to cover the expenses of the examination of the claims, the Commissioner will, in every case where he is of opinion that a claim should be recognized, at once state what further sum the claimant should be required to pay. This sum will be based on the amount of the land to which the claimant's title is recognized.

If the sums deposited in accordance with clause (3) exceed the expenses of the examination, the balance will be devoted to the cost of the arbitration hereinafter provided for.

(9) Within three months from the date of the report referred to in clause (7) of this paragraph, the Norwegian Government shall take the necessary steps to confer upon claimants whose claims have been recognized by the Commissioner a valid title securing to them the exclusive property in the land in question, in accordance with the laws and regulations in force or to be enforced in the territories specified in Article 1 of the present treaty, and subject to the mining regulations referred to in Article 8 of the present treaty.

In the event, however, of a further payment being required in accordance with clause (8) of this paragraph, a provisional title only will be delivered, which title will become definitive on payment by the claimant, within such reasonable period as the Norwegian Government may fix, of the further sum required of him.

2

Claims which for any reason the Commissioner referred to in clause (1) of the preceding paragraph has not recognized as valid will be settled in accordance with the following provisions:

(1) Within three months from the date of the report referred to in clause (7) of the preceding paragraph, each of the governments whose nationals have been found to possess claims which have not been recognized will appoint an arbitrator.

The Commissioner will be the President of the Tribunal so constituted. In cases of equal division of opinion, he shall have the deciding vote. He will nominate a Secretary to receive the documents referred to in clause (2) of this paragraph and to make the necessary arrangements for the meeting of the Tribunal.

(2) Within one month from the appointment of the Secretary referred to in clause (1) the claimants concerned will send to him through the intermediary of their respective governments statements indicating precisely their claims and accompanied by such documents and arguments as they may wish to submit in support thereof.

(3) Within two months from the appointment of the Secretary referred to in clause (1) the Tribunal shall meet at Copenhagen for the purpose of dealing with the claims which have been submitted to it.

(4) The language of the Tribunal shall be English. Documents or arguments may be submitted to it by the interested parties in their own language, but in that case must be accompanied by an English translation.

(5) The claimants shall be entitled, if they so desire, to be heard by the Tribunal either in person or by counsel, and the Tribunal shall be entitled to call upon the claimants to present such additional explanations, documents or arguments as it may think necessary.

(6) Before the hearing of any case the Tribunal shall require from the parties a deposit or security for such sum as it may think necessary to cover the share of each party in the expenses of the Tribunal. In fixing the amount of such sum the Tribunal shall base itself principally on the extent of the land claimed. The Tribunal shall also have power to demand a further deposit from the parties in cases where special expense is involved.

(7) The honorarium of the arbitrators shall be calculated per month, and fixed by the governments concerned. The salary of the Secretary and any other persons employed by the Tribunal shall be fixed by the President.

(8) Subject to the provisions of this annex the Tribunal shall have full power to regulate its own procedure.

(9) In dealing with the claims the Tribunal shall take into consideration:

- (a) any applicable rules of international law;
- (b) the general principles of justice and equity;
- (c) the following circumstances:

- (i) the date on which the land claimed was first occupied by the claimant or his predecessors in title;

- (ii) the date on which the claim was notified to the government of the claimant;

- (iii) the extent to which the claimant or his predecessors in title have developed and exploited the land claimed. In this connection the Tribunal shall take into account the extent to which the claimants may have been prevented from developing their undertakings by conditions or restrictions resulting from the war of 1914-1919.

(10) All the expenses of the Tribunal shall be divided among the claimants in such proportion as the Tribunal shall decide. If the amount of the sums paid in accordance with clause (6) is larger than the expenses of the Tribunal, the balance shall be returned to the parties whose claims have been recognized in such proportion as the Tribunal shall think fit.

(11) The decisions of the Tribunal shall be communicated by it to the governments concerned, including in every case the Norwegian Government.

The Norwegian Government shall within three months from the receipt of each decision take the necessary steps to confer upon the claimants whose claims have been recognized by the Tribunal a valid title to the land in question, in accordance with the laws and regulations in force or to be enforced in the territories specified in Article 1, and subject to the mining regulations referred to in Article 8 of the present treaty. Nevertheless, the titles so conferred will only become definitive on the payment by the claimant concerned, within such reasonable period as the Norwegian Government may fix, of his share of the expenses of the Tribunal.

Any claims which are not notified to the Commissioner in accordance with clause (1) of paragraph 1, or which not having been recognized by him are

not submitted to the Tribunal in accordance with paragraph 2, will be finally extinguished.

AN ACT TO LIMIT THE IMMIGRATION OF ALIENS INTO THE UNITED STATES,
AND FOR OTHER PURPOSES ¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration Act of 1924."

Immigration Visas

SEC. 2. (a) A consular officer upon the application of any immigrant (as defined in section 3) may (under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations made thereunder as to the number of immigration visas which may be issued by such officer) issue to such immigrant an immigration visa which shall consist of one copy of the application provided for in section 7, visaed by such consular officer. Such visa shall specify (1) the nationality of the immigrant; (2) whether he is a quota immigrant (as defined in section 5) or a non-quota immigrant (as defined in section 4); (3) the date on which the validity of the immigration visa shall expire; and (4) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

(b) The immigrant shall furnish two copies of his photograph to the consular officer. One copy shall be permanently attached by the consular officer to the immigration visa and the other copy shall be disposed of as may be by regulations prescribed.

(c) The validity of an immigration visa shall expire at the end of such period, specified in the immigration visa, not exceeding four months, as shall be by regulations prescribed. In the case of an immigrant arriving in the United States by water, or arriving by water in foreign contiguous territory on a continuous voyage to the United States, if the vessel, before the expiration of the validity of his immigration visa, departed from the last port outside the United States and outside foreign contiguous territory at which the immigrant embarked, and if the immigrant proceeds on a continuous voyage to the United States, then, regardless of the time of his arrival in the United States, the validity of his immigration visa shall not be considered to have expired.

(d) If an immigrant is required by any law, or regulations or orders made pursuant to law, to secure the visa of his passport by a consular officer before being permitted to enter the United States, such immigrant shall not be required to secure any other visa of his passport than the immigration visa

¹ PUBLIC—No. 139—68TH CONGRESS (H. R. 7995).

issued under this Act, but a record of the number and date of his immigration visa shall be noted on his passport without charge therefor. This subdivision shall not apply to an immigrant who is relieved, under subdivision (b) of section 13, from obtaining an immigration visa.

(e) The manifest or list of passengers required by the immigration laws shall contain a place for entering thereon the date, place of issuance, and number of the immigration visa of each immigrant. The immigrant shall surrender his immigration visa to the immigration officer at the port of inspection, who shall at the time of inspection indorse on the immigration visa the date, the port of entry, and the name of the vessel, if any, on which the immigrant arrived. The immigration visa shall be transmitted forthwith by the immigration officer in charge at the port of inspection to the Department of Labor under regulations prescribed by the Secretary of Labor.

(f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the application fails to comply with the provisions of this Act, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws.

(g) Nothing in this Act shall be construed to entitle an immigrant, to whom an immigration visa has been issued, to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws. The substance of this subdivision shall be printed conspicuously upon every immigration visa.

(h) A fee of \$9 shall be charged for the issuance of each immigration visa, which shall be covered into the Treasury as miscellaneous receipts.

Definition of "Immigrant"

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

Non-Quota Immigrants

SEC. 4. When used in this Act the term "non-quota immigrant" means—

(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9;

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad;

(c) An immigrant who was born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him;

(d) An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him; or

(e) An immigrant who is a bona fide student at least 15 years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such institution of learning fails to make such reports promptly the approval shall be withdrawn.

Quota Immigrants

SEC. 5. When used in this Act the term "quota immigrant" means any immigrant who is not a non-quota immigrant. An alien who is not particularly specified in this Act as a non-quota immigrant or a non-immigrant shall not be admitted as a non-quota immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration.

Preferences Within Quotas

SEC. 6. (a) In the issuance of immigration visas to quota immigrants preference shall be given—

(1) To a quota immigrant who is the unmarried child under 21 years of age, the father, the mother, the husband, or the wife, of a citizen of the United States who is 21 years of age or over; and

(2) To a quota immigrant who is skilled in agriculture, and his wife, and his dependent children under the age of 16 years, if accompanying or fol-

lowing to join him. The preference provided in this paragraph shall not apply to immigrants of any nationality the annual quota for which is less than 300.

(b) The preference provided in subdivision (a) shall not in the case of quota immigrants of any nationality exceed 50 per centum of the annual quota for such nationality. Nothing in this section shall be construed to grant to the class of immigrants specified in paragraph (1) of subdivision (a) a priority in preference over the class specified in paragraph (2).

(c) The preference provided in this section shall, in the case of quota immigrants of any nationality, be given in the calendar month in which the right to preference is established, if the number of immigration visas which may be issued in such month to quota immigrants of such nationality has not already been issued; otherwise in the next calendar month.

Application for Immigration Visa

SEC. 7. (a) Every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulations prescribed.

(b) In the application the immigrant shall state (1) the immigrant's full and true name; age, sex, and race; the date and place of birth; places of residence for the five years immediately preceding his application; whether married or single, and the names and places of residence of wife or husband and minor children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); ability to speak, read, and write; names and addresses of parents, and if neither parent living, then the name and address of his nearest relative in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, what relative or friend and his name and complete address; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to abide in the United States permanently; whether ever in prison or almshouse; whether he or either of his parents has ever been in an institution or hospital for the care and treatment of the insane; (2) if he claims to be a non-quota immigrant, the facts on which he bases such claim; and (3) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws, as may be by regulations prescribed.

(c) The immigrant shall furnish, if available, to the consular officer, with his application, two copies of his "dossier" and prison record and military record, two certified copies of his birth certificate, and two copies of all other available public records concerning him kept by the Government to which he owes allegiance. One copy of the documents so furnished shall be permanently attached to each copy of the application and become a part thereof.

An immigrant having an unexpired permit issued under the provisions of section 10 shall not be subject to this subdivision. In the case of an application made before September 1, 1924, if it appears to the satisfaction of the consular officer that the immigrant has obtained a visa of his passport before the enactment of this Act, and is unable to obtain the documents referred to in this subdivision without undue expense and delay, owing to absence from the country from which such documents should be obtained, the consular officer may relieve such immigrant from the requirements of this subdivision.

(d) In the application the immigrant shall also state (to such extent as shall be by regulations prescribed) whether or not he is a member of each class of individuals excluded from admission to the United States under the immigration laws, and such classes shall be stated on the blank in such form as shall be by regulations prescribed, and the immigrant shall answer separately as to each class.

(e) If the immigrant is unable to state that he does not come within any of the excluded classes, but claims to be for any legal reason exempt from exclusion, he shall state fully in the application the grounds for such alleged exemption.

(f) Each copy of the application shall be signed by the immigrant in the presence of the consular officer and verified by the oath of the immigrant administered by the consular officer. One copy of the application, when visaed by the consular officer, shall become the immigration visa; and the other copy shall be disposed of as may be by regulations prescribed.

(g) In the case of an immigrant under eighteen years of age the application may be made and verified by such individual as shall be by regulations prescribed.

(h) A fee of \$1 shall be charged for the furnishing and verification of each application, which shall include the furnishing and verification of the duplicate, and shall be covered into the Treasury as miscellaneous receipts.

Non-Quota Immigration Visas

SEC. 8. A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a non-quota immigrant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a non-quota immigrant.

Issuance of Immigration Visas to Relatives

SEC. 9. (a) In case of any immigrant claiming in his application for an immigration visa to be a non-quota immigrant by reason of relationship under the provisions of subdivision (a) of section 4, or to be entitled to preference by reason of relationship to a citizen of the United States under the provisions of section 6, the consular officer shall not issue such immigration

visa or grant such preference until he has been authorized to do so as herein-after in this section provided.

(b) Any citizen of the United States claiming that any immigrant is his relative, and that such immigrant is properly admissible to the United States as a non-quota immigrant under the provisions of subdivision (a) of section 4 or is entitled to preference as a relative under section 6, may file with the Commissioner General a petition in such form as may be by regulations prescribed, stating (1) the petitioner's name and address; (2) if a citizen by birth, the date and place of his birth; (3) of a naturalized citizen, the date and place of his admission to citizenship and the number of his certificate, if any; (4) the name and address of his employer or the address of his place of business or occupation if he is not an employee; (5) the degree of the relationship of the immigrant for whom such petition is made, and the names of all the places where such immigrant has resided prior to and at the time when the petition is filed; (6) that the petitioner is able to and will support the immigrant if necessary to prevent such immigrant from becoming a public charge; and (7) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

(c) The petition shall be made under oath administered by any individual having power to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer. The petition shall be supported by any documentary evidence required by regulations prescribed under this Act. Application may be made in the same petition for admission of more than one individual.

(d) The petition shall be accompanied by the statements of two or more responsible citizens of the United States, to whom the petitioner has been personally known for at least one year, that to the best of their knowledge and belief the statements made in the petition are true and that the petitioner is a responsible individual able to support the immigrant or immigrants for whose admission application is made. These statements shall be attested in the same way as the petition.

(e) If the Commissioner General finds the facts stated in the petition to be true, and that the immigrant in respect of whom the petition is made is entitled to be admitted to the United States as a non-quota immigrant under subdivision (a) of section 4 or is entitled to preference as a relative under section 6, he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to issue the immigration visa or grant the preference.

(f) Nothing in this section shall be construed to entitle an immigrant, in respect of whom a petition under this section is granted, to enter the United States as a non-quota immigrant, if, upon arrival in the United States, he is found not to be a non-quota immigrant.

Permit to Reënter United States After Temporary Absence

SEC. 10. (a) Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reënter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph.

(b) If the Commissioner General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

(c) On good cause shown the validity of the permit may be extended for such period or periods, not exceeding six months each, and under such conditions, as shall be by regulations prescribed.

(d) For the issuance of the permit, and for each extension thereof, there shall be paid a fee of \$3, which shall be covered into the Treasury as miscellaneous receipts.

(e) Upon the return of the alien to the United States the permit shall be surrendered to the immigration officer at the port of inspection.

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

Numerical Limitations

SEC. 11. (a) The annual quota of any nationality shall be 2 per centum of the number of foreign-born individuals of such nationality resident in continental United States as determined by the United States census of 1890, but the minimum quota of any nationality shall be 100.

(b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each fiscal year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.

(c) For the purpose of subdivision (b) national origin shall be ascertained by determining as nearly as may be, in respect of each geographical area which under section 12 is to be treated as a separate country (except the

geographical areas specified in subdivision (c) of section 4) the number of inhabitants in continental United States in 1920 whose origin by birth or ancestry is attributable to such geographical area. Such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable.

(d) For the purpose of subdivisions (b) and (c) the term "inhabitants in continental United States in 1920" does not include (1) immigrants from the geographical areas specified in subdivision (c) of section 4 or their descendants, (2) aliens ineligible to citizenship or their descendants, (3) the descendants of slave immigrants, or (4) the descendants of American aborigines.

(e) The determination provided for in subdivision (c) of this section shall be made by the Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly. In making such determination such officials may call for information and expert assistance from the Bureau of the Census. Such officials shall, jointly, report to the President the quota of each nationality, determined as provided in subdivision (b), and the President shall proclaim and make known the quotas so reported. Such proclamation shall be made on or before April 1, 1927. If the proclamation is not made on or before such date, quotas proclaimed therein shall not be in effect for any fiscal year beginning before the expiration of 90 days after the date of the proclamation. After the making of a proclamation under this subdivision the quotas proclaimed therein shall continue with the same effect as if specifically stated herein, and shall be final and conclusive for every purpose except (1) in so far as it is made to appear to the satisfaction of such officials and proclaimed by the President, that an error of fact has occurred in such determination or in such proclamation, or (2) in the case provided for in subdivision (c) of section 12. If for any reason quotas proclaimed under this subdivision are not in effect for any fiscal year, quotas for such year shall be determined under subdivision (a) of this section.

(f) There shall be issued to quota immigrants of any nationality (1) no more immigration visas in any fiscal year than the quota for such nationality, and (2) in any calendar month of any fiscal year no more immigration visas than 10 per centum of the quota for such nationality, except that if such quota is less than 300 the number to be issued in any calendar month shall be prescribed by the Commissioner General, with the approval of the Secretary of Labor, but the total number to be issued during the fiscal year shall not be in excess of the quota for such nationality.

(g) Nothing in this Act shall prevent the issuance (without increasing the total number of immigration visas which may be issued) of an immigration visa to an immigrant as a quota immigrant even though he is a non-quota immigrant.

Nationality

SEC. 12. (a) For the purposes of this Act nationality shall be determined by country of birth, treating as separate countries the colonies, dependencies, or self-governing dominions, for which separate enumeration was made in the United States census of 1890; except that (1) the nationality of a child under twenty-one years of age not born in the United States, accompanied by its alien parent not born in the United States, shall be determined by the country of birth of such parent if such parent is entitled to an immigration visa, and the nationality of a child under twenty-one years of age not born in the United States, accompanied by both alien parents not born in the United States, shall be determined by the country of birth of the father if the father is entitled to an immigration visa; and (2) if a wife is of a different nationality from her alien husband and the entire number of immigration visas which may be issued to quota immigrants of her nationality for the calendar month has already been issued, her nationality may be determined by the country of birth of her husband if she is accompanying him and he is entitled to an immigration visa, unless the total number of immigration visas which may be issued to quota immigrants of the nationality of the husband for the calendar month has already been issued. An immigrant born in the United States who has lost his United States citizenship shall be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country, then in the country from which he comes.

(b) The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this Act, prepare a statement showing the number of individuals of the various nationalities resident in continental United States as determined by the United States census of 1890, which statement shall be the population basis for the purposes of subdivision (a) of section 11. In the case of a country recognized by the United States, but for which a separate enumeration was not made in the census of 1890, the number of individuals born in such country and resident in continental United States in 1890, as estimated by such officials jointly, shall be considered for the purposes of subdivision (a) of section 11 as having been determined by the United States census of 1890. In the case of a colony or dependency existing before 1890, but for which a separate enumeration was not made in the census of 1890 and which was not included in the enumeration for the country to which such colony or dependency belonged, or in the case of territory administered under a protectorate, the number of individuals born in such colony, dependency, or territory, and resident in continental United States in 1890, as estimated by such officials jointly, shall be considered for the purposes of subdivision (a) of section 11 as having been determined by the United States census of 1890 to have been born in the country to which such colony or dependency belonged or which administers such protectorate.

(c) In case of changes in political boundaries in foreign countries occurring

subsequent to 1890 and resulting in the creation of new countries, the Governments of which are recognized by the United States, or in the establishment of self-governing dominions, or in the transfer of territory from one country to another, such transfer being recognized by the United States, or in the surrender by one country of territory, the transfer of which to another country has not been recognized by the United States, or in the administration of territories under mandates, (1) such officials, jointly, shall estimate the number of individuals resident in continental United States in 1890 who were born within the area included in such new countries or self-governing dominions or in such territory so transferred or surrendered or administered under a mandate, and revise (for the purposes of subdivision (a) of section 11) the population basis as to each country involved in such change of political boundary, and (2) if such changes in political boundaries occur after the determination provided for in subdivision (c) of section 11 has been proclaimed, such officials, jointly, shall revise such determination, but only so far as necessary to allot the quotas among the countries involved in such change of political boundary. For the purpose of such revision and for the purpose of determining the nationality of an immigrant, (A) aliens born in the area included in any such new country or self-governing dominion shall be considered as having been born in such country or dominion, and aliens born in any territory so transferred shall be considered as having been born in the country to which such territory was transferred, and (B) territory so surrendered or administered under a mandate shall be treated as a separate country. Such treatment of territory administered under a mandate shall not constitute consent by the United States to the proposed mandate where the United States has not consented in a treaty to the administration of the territory by a mandatory power.

(d) The statements, estimates, and revisions provided in this section shall be made annually, but for any fiscal year for which quotas are in effect as proclaimed under subdivision (e) of section 11, shall be made only (1) for the purpose of determining the nationality of immigrants seeking admission to the United States during such year, or (2) for the purposes of clause (2) of subdivision (c) of this section.

(e) Such officials shall, jointly, report annually to the President the quota of each nationality under subdivision (a) of section 11, together with the statements, estimates, and revisions provided for in this section. The President shall proclaim and make known the quotas so reported and thereafter such quotas shall continue, with the same effect as if specifically stated herein, for all fiscal years except those years for which quotas are in effect as proclaimed under subdivision (e) of section 11, and shall be final and conclusive for every purpose.

Exclusion from United States

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the

issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.

(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3.

(d) The Secretary of Labor may admit to the United States any otherwise admissible immigrant not admissible under clause (2) or (3) of subdivision (a) of this section, if satisfied that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel from the last port outside the United States and outside foreign contiguous territory, or, in the case of an immigrant coming from foreign contiguous territory, prior to the application of the immigrant for admission.

(e) No quota immigrant shall be admitted under subdivision (d) if the entire number of immigration visas which may be issued to quota immigrants of the same nationality for the fiscal year has already been issued. If such entire number of immigration visas has not been issued, then the Secretary of State, upon the admission of a quota immigrant under subdivision (d), shall reduce by one the number of immigration visas which may be issued to quota immigrants of the same nationality during the fiscal year in which such immigrant is admitted; but if the Secretary of State finds that it will not be practicable to make such reduction before the end of such fiscal year, then such immigrant shall not be admitted.

(f) Nothing in this section shall authorize the remission or refunding of a fine, liability to which has accrued under section 16.

Deportation

SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917: *Provided*, That the Secretary of Labor may, under such conditions and restrictions as to support and care as he may deem necessary, permit permanently to remain in the United States, any

alien child who, when under sixteen years of age was heretofore temporarily admitted to the United States and who is now within the United States and either of whose parents is a citizen of the United States.

Maintenance of Exempt Status

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a non-quota immigrant by subdivision (c) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clauses (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States.

Penalty for Illegal Transportation

SEC. 16. (a) It shall be unlawful for any person, including any transportation company, or the owner, master, agent, charterer, or consignee of any vessel, to bring to the United States by water from any place outside thereof (other than foreign contiguous territory) (1) any immigrant who does not have an unexpired immigration visa, or (2) any quota immigrant having an immigration visa the visa in which specifies him as a non-quota immigrant.

(b) If it appears to the satisfaction of the Secretary of Labor that any immigrant has been so brought, such person, or transportation company, or the master, agent, owner, charterer, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$1,000 for each immigrant so brought, and in addition a sum equal to that paid by such immigrant for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the immigrant on whose account assessed. No vessel shall be granted clearance pending the determination of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(c) Such sums shall not be remitted or refunded, unless it appears to the satisfaction of the Secretary of Labor that such person, and the owner, master, agent, charterer, and consignee of the vessel, prior to the departure of the vessel from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, (1) that the individual transported was an immigrant, if the fine was imposed for bringing an immigrant without an unexpired immigration visa, or (2) that

the individual transported was a quota immigrant, if the fine was imposed for bringing a quota immigrant the visa in whose immigration visa specified him as being a non-quota immigrant.

Entry from Foreign Contiguous Territory

SEC. 17. The Commissioner General, with the approval of the Secretary of Labor, shall have power to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States from or through foreign contiguous territory. In prescribing rules and regulations and making contracts for the entry and inspection of aliens applying for admission from or through foreign contiguous territory due care shall be exercised to avoid any discriminatory action in favor of transportation companies transporting to such territory aliens destined to the United States, and all such transportation companies shall be required, as a condition precedent to the inspection or examination under such rules and contracts at the ports of such contiguous territory of aliens brought thereto by them, to submit to and comply with all the requirements of this Act which would apply were they bringing such aliens directly to ports of the United States. After this section takes effect no alien applying for admission from or through foreign contiguous territory (except an alien previously lawfully admitted to the United States who is returning from a temporary visit to such territory) shall be permitted to enter the United States unless upon proving that he was brought to such territory by a transportation company which had submitted to and complied with all the requirements of this Act, or that he entered, or has resided in, such territory more than two years prior to the time of his application for admission to the United States.

Unused Immigration Visas

SEC. 18. If a quota immigrant of any nationality having an immigration visa is excluded from admission to the United States under the immigration laws and deported, or does not apply for admission to the United States before the expiration of the validity of the immigration visa, or if an alien of any nationality having an immigration visa issued to him as a quota immigrant is found not to be a quota immigrant, no additional immigration visa shall be issued in lieu thereof to any other immigrant.

Alien Seamen

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States.

SEC. 20. (a) The owner, charterer, agent, consignee, or master of any

vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration officer in charge at the port of arrival has inspected such seaman (which inspection in all cases shall include a personal physical examination by the medical examiners), or who fails to detain such seaman on board after such inspection or to deport such seaman if required by such immigration officer or the Secretary of Labor to do so, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$1,000 for each alien seaman in respect of whom such failure occurs. No vessel shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(b) Proof that an alien seaman did not appear upon the outgoing manifest of the vessel on which he arrived in the United States from any place outside thereof, or that he was reported by the master of such vessel as a deserter, shall be prima facie evidence of a failure to detain or deport after requirement by the immigration officer or the Secretary of Labor.

(c) If the Secretary of Labor finds that deportation of the alien seaman on the vessel on which he arrived would cause undue hardship to such seaman he may cause him to be deported on another vessel at the expense of the vessel on which he arrived, and such vessel shall not be granted clearance until such expense has been paid or its payment guaranteed to the satisfaction of the Secretary of Labor.

(d) Section 32 of the Immigration Act of 1917 is repealed, but shall remain in force as to all vessels, their owners, agents, consignees, and masters, and as to all seamen, arriving in the United States prior to the enactment of this Act.

Preparation of Documents

SEC. 21. (a) Permits issued under section 10 shall be printed on distinctive safety paper and shall be prepared and issued under regulations prescribed under this Act.

(b) The Public Printer is authorized to print for sale to the public by the Superintendent of Public Documents, upon prepayment, additional copies of blank forms of manifests and crew lists to be prescribed by the Secretary of Labor pursuant to the provisions of sections 12, 13, 14, and 36 of the Immigration Act of 1917.

Offenses in Connection with Documents

SEC. 22. (a) Any person who knowingly (1) forges, counterfeits, alters, or falsely makes any immigration visa or permit, or (2) utters, uses, attempts to use, possesses, obtains, accepts, or receives any immigration visa or permit, knowing it to be forged, counterfeited, altered, or falsely made, or to have

been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or who, except under direction of the Secretary of Labor or other proper officer, knowingly (3) possesses any blank permit, (4) engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, (5) makes any print, photograph, or impression in the likeness of any immigration visa or permit, or (6) has in his possession a distinctive paper which has been adopted by the Secretary of Labor for the printing of immigration visas or permits, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

(b) Any individual who (1) when applying for an immigration visa or permit, or for admission to the United States, personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name, or (2) sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, an immigration visa or permit, to any person not authorized by law to receive such document, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

(c) Whoever knowingly makes under oath any false statement in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

Burden of Proof

SEC. 23. Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigration visa, if any, or of other documents concerning such entry, in the custody of the Department of Labor.

Rules and Regulations

SEC. 24. The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, in so far as they relate to the administration of this Act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor.

Act to be in Addition to Immigration Laws

SEC. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a

part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act.

Steamship Fines Under 1917 Act

SEC. 26. Section 9 of the Immigration Act of 1917 is amended to read as follows:

"SEC. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed. It shall also be unlawful for any such person to bring to any port of the United States any alien afflicted with any mental defect other than those above specifically named, or physical defect of a nature which may affect his ability to earn a living, as contemplated in section 3 of this Act, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was so afflicted at the time of foreign embarkation, and that the existence of such mental or physical defect might have been detected by means of a competent medical examination at such time, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$250, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien for whose account assessed. It shall also be unlawful for any

such person to bring to any port of the United States any alien who is excluded by the provisions of section 3 of this Act because unable to read, or who is excluded by the terms of section 3 of this Act as a native of that portion of the Continent of Asia and the islands adjacent thereto described in said section, and if it shall appear to the satisfaction of the Secretary of Labor that these disabilities might have been detected by the exercise of reasonable precaution prior to the departure of such aliens from a foreign port, such person shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of \$1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, for each and every violation of this provision, such latter sum to be delivered by the collector of customs to the alien on whose account assessed.

"If a fine is imposed under this section for the bringing of an alien to the United States, and if such alien is accompanied by another alien who is excluded from admission by the last proviso of section 18 of this Act, the person liable for such fine shall pay to the collector of customs, in addition to such fine but as a part thereof, a sum equal to that paid by such accompanying alien for his transportation from his initial point of departure indicated in his ticket, to the point of arrival, such sum to be delivered by the collector of customs to the accompanying alien when deported. And no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fines, or while the fines remain unpaid, nor shall such fines be remitted or refunded: *Provided*, That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the collector of customs: *Provided further*, That nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to section 3 of this Act exempted from the excluding provisions of said section."

SEC. 27. Section 10 of the Immigration Act of 1917 is amended to read as follows:

"SEC. 10. (a) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if

in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of \$1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

"(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers."

General Definitions

SEC. 28. As used in this Act—

(a) The term "United States," when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Porto Rico, and the Virgin Islands; and the term "continental United States" means the States and the District of Columbia;

(b) The term "alien" includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed, nor citizens of the islands under the jurisdiction of the United States;

(c) The term "ineligible to citizenship," when used in reference to any individual, includes an individual who is debarred from becoming a citizen of the United States under section 2169 of the Revised Statutes, or under section 14 of the Act entitled "An Act to execute certain treaty stipulations relating to Chinese," approved May 6, 1882, or under section 1996, 1997, or 1998 of the Revised Statutes, as amended, or under section 2 of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, as amended, or under law amendatory of, supplementary to, or in substitution for, any of such sections;

(d) The term "immigration visa" means an immigration visa issued by a consular officer under the provisions of this Act;

(e) The term "consular officer" means any consular or diplomatic officer of the United States designated, under regulations prescribed under this Act, for the purpose of issuing immigration visas under this Act. In case of the Canal Zone and the insular possessions of the United States the term "consular officer" (except as used in section 24) means an officer designated by the President, or by his authority, for the purpose of issuing immigration visas under this Act;

(f) The term "Immigration Act of 1917" means the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States";

(g) The term "immigration laws" includes such Act, this Act, and all

laws, conventions, and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens;

(h) The term "person" includes individuals, partnerships, corporations, and associations;

(i) The term "Commissioner General" means the Commissioner General of Immigration;

(j) The term "application for admission" has reference to the application for admission to the United States and not to the application for the issuance of the immigration visa;

(k) The term "permit" means a permit issued under section 10;

(l) The term "unmarried," when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married;

(m) The terms "child," "father," and "mother," do not include a child or parent by adoption unless the adoption took place before January 1, 1924;

(n) The terms "wife" and "husband" do not include a wife or husband by reason of a proxy or picture marriage.

Authorization of Appropriation

SEC. 29. The appropriation of such sums as may be necessary for the enforcement of this Act is hereby authorized.

Act of May 19, 1921

SEC. 30. The Act entitled "An Act to limit the immigration of aliens into the United States," approved May 19, 1921, as amended and extended, shall, notwithstanding its expiration on June 30, 1924, remain in force thereafter for the imposition, collection, and enforcement of all penalties that may have accrued thereunder, and any alien who prior to July 1, 1924, may have entered the United States in violation of such Act or regulations made thereunder may be deported in the same manner as if such Act had not expired.

Time of Taking Effect

SEC. 31. (a) Sections 2, 8, 13, 14, 15, and 16, and subdivision (f) of section 11, shall take effect on July 1, 1924, except that immigration visas and permits may be issued prior to that date, which shall not be valid for admission to the United States before July 1, 1924. In the case of quota immigrants of any nationality, the number of immigration visas to be issued prior to July 1, 1924, shall not be in excess of 10 per centum of the quota for such nationality, and the number of immigration visas so issued shall be deducted from the number which may be issued during the month of July, 1924. In the case of immigration visas issued before July 1, 1924, the four-month period referred to in subdivision (c) of section 2 shall begin to run on July 1, 1924, instead of at the time of the issuance of the immigration visa.

(b) The remainder of this Act shall take effect upon its enactment.

(c) If any alien arrives in the United States before July 1, 1924, his right to admission shall be determined without regard to the provisions of this Act, except section 23.

Saving Clause in Event of Unconstitutionality

SEC. 32. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved, May 26, 1924.

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